

# STATE ADMINISTRATION





# STATE ADMINISTRATION

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## PREFACE

It is the purpose of this book to outline the numerous activities in which every one of the forty-eight states may be expected to engage today, and to propose ways of organizing suitable agencies for the proper administration of these various services. Many excellent books on national, state, and local government touch upon these problems incidentally; other good books deal intensively with administrative problems and techniques. Numerous specific programs for reorganizing the administrative services of particular states have been worked out and published. But it is also the further purpose of this book to present in general outline what might be looked upon as a skeleton framework of administrative agencies—offices, departments, boards, commissions, and bureaus—which, with modifications and additions, would be appropriate for any one of the states.

The actual work of the various offices and departments has been discussed—but not in the detail that would be necessary in a book devoted to the technique of administration. Methods of organizing administrative units have been suggested—but not in the precise and detailed terms that would be appropriate in discussing the situation in any particular state.

It has seemed desirable to point out that there is seldom any one correct solution to the problem under discussion. Nevertheless, many specific recommendations are offered in order to give point to the discussion, and some effort has been made to explain and defend them. Charts would have made these recommendations more vivid and clear, perhaps, but, except for one at the end of Chapter IX, charts have not been used, since they tend to convey an impression of rigid, uncompromising finality that is not at all intended in this book.

Not every administrative service to be found in any one of the states has been touched upon, and many of the services have been dealt with very briefly. Nevertheless it is believed that the more important services have been discussed in such manner as to indicate how the lesser ones would fit into the general pattern here presented.

It is hoped that this presentation of state administration will help to give a comprehensive vision of the things that the modern state is

undertaking to do, and an adequate appreciation of the problem of organizing administrative agencies to do such things effectively.

It is with deep appreciation that I acknowledge my indebtedness to Dr. Lena B. Hecker. As a post-doctoral research assistant in political science, she has rendered generous and untiring aid at every step in the preparation of the manuscript. Her services were invaluable especially in making a critical study of the literature of the subject, in editorial revision, and in preparing the bibliography.

K. H. P.

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# STATE ADMINISTRATION



## CHAPTER I

### THE ADMINISTRATIVE STRUCTURE

IN writing or talking about government it often becomes necessary to adopt some rather arbitrary definitions of terms that are used very freely in general conversation, but which have a rather special and narrow significance for the student of government. What is a town? The word has different meanings in different states, and in casual conversation it may imply nothing more than a cluster of habitations. Just how can one define a political party? What does the word "organization" mean precisely? What is a department? If one were to try to formulate some exact definitions of these various terms, and many others like them, it would be appreciated at once that rather arbitrary concepts must be adopted. The terms do not have an exact meaning in the sense that one meaning is absolutely right and any other meaning is wrong. This is one reason why some people do not approve of the term "political science" as applied to the study of government. In their opinion, the terminology of the subject is not sufficiently exact.

#### ADMINISTRATION DEFINED

One of these troublesome words is "administration." It does not have any exact meaning in the realm of government upon which all students of the subject would entirely agree.<sup>1</sup> Yet we know fairly well, largely from the context, what is meant when the word is used. How-

<sup>1</sup> "The term 'administration' may be employed in political science in two senses. In its broadest sense, it denotes the work involved in the actual conduct of governmental affairs, regardless of the particular branch of government concerned. It is thus quite proper to speak of the administration of the legislative branch of government, the administration of justice or judicial affairs, or the administration of the executive power, as well as the administration of the affairs of the administrative branch of government, or the conduct of the affairs of the government generally. In its narrowest sense, it denotes the operations of the administrative branch only." W. F. Willoughby, *Principles of Public Administration* (Baltimore: The Johns Hopkins Press, 1927), p. 1.

"Public administration is the management of men and materials in the accomplishment of the purposes of the state." From Leonard D. White, *Introduction to the Study of Public Administration* (New York: 1926), p. 2. (By permission of The Macmillan Company, publishers.)

"Public administration is, then, the execution of the public business; the goal of ad-

ever, there is no occasion here to present and to defend a labored definition. Certainly the term implies activity—doing things. When the government constructs a mile of highway, there is an example of administration. When the government sets up and operates a university, a hospital, or any other institution, there is an example of administration. When the government, through its agents, enforces a pure-food law, or a code of fair competition, there are other examples of administration. In a word, all the departments, offices, and agencies of government that are concerned with actually doing the things that the state has declared shall be done are engaged in administration.

On the other hand, the term "administration" may have a narrower signification. To many people it means simply the organization and management of people and material for the purpose of doing the task at hand. It is said, for instance, that a certain amount of money has been appropriated for a given purpose, and that a specified sum has been set aside for "administration." The implication of this is that the sum for administration is to be used for "overhead," for equipping offices, and for the employment of people to do so-called "administrative" work incidental to the main undertaking. The proper organization of personnel, the proper equipment of employees with the things they need in order to do their work efficiently and economically, the intelligent control and management of people who actually do the work, thus constitute administration. Students speak of sound principles of administration when they refer to proper ways of doing this. But in a broader sense, the entire task is an administrative undertaking. To build a bridge is an administrative task, as would be the care of the indigent in a given county or state. To organize and manage the people and materials needed to do the task would be a very important part of the entire problem of administration. It would not be the whole of it.

But in any event, administration is to be differentiated from the other functions of government. The legislative function is primarily that of determining what shall be done. That is the policy-determining function; it includes the providing of ways and means and the making

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ministrative activity the most expeditious, economical, and complete achievement of public programs." *Ibid.*, p. 4.

"The work which the government does to give effect to a law is called administration."

"... It does not seem important to decide whether the exercise of the judgment of the administrator is an exercise of legislative, or judicial, or administrative power. It would seem, however, that until the law is complete, until its meaning is plain to all who are called upon to administer it, administration proper cannot begin." Harvey Walker, *Public Administration in the United States* (New York: 1937), p. 5. (Reprinted by permission of the publishers, Farrar & Rinehart, Inc.)

of appropriations. It is, of course, by far the most important function of government. The judicial function is that of interpreting the law, declaring what it means, and applying it to cases that come before the courts.

It is well known to all students of American history and government that our constitutional fathers were much impressed with the desirability of separating these functions of government and putting them in the hands of relatively independent agencies or departments that could check and balance each other. This feeling led to the well known tripartite division of functions into the legislative, executive, and judicial branches, a practice that has been followed in every one of the forty-eight states.

Obviously, if administration is not a separate and distinct function by itself, it will be found within one of these three departments, and one would expect to find it associated with the executive function. That is indeed the case. The direction of administration is generally looked upon as a proper function of the chief executive. One of the elementary, basic functions of a chief executive is to personify the body politic. Be the chief executive a borough president, a mayor of a city, a governor of a state, an emperor or king, he personifies the body politic of which he is the chief executive. He speaks for it, and through him the body politic maintains contact with the outside world. This function has nothing necessarily to do with genuine power and authority. In reality the chief executive may be nothing but an automaton, saying and doing what other authorities in the background may be telling him to say and do. The executive function is to speak and to act in the name of the body politic, be it a town, a state, an empire, or a band of aborigines. On the other hand, a chief executive may be an absolute autocrat, not only speaking and acting for the body politic, but himself making all the decisions that lie back of his words and deeds.

Another elementary function of a chief executive is that of compelling obedience to the law within his domain. This function in essence is the same, whether it be performed by an Indian chief with a club in his hand, or by the President of the United States through all the elaborate machinery of law enforcement that has been constructed for the purpose. Other executive functions, largely incidental to these two, are to command the armed forces, whether they be a huge army and navy or a couple of town constables, to make appointments and removals in accordance with law, and to grant pardons and reprieves. It is not possible to make an exhaustive list of truly executive functions. The ones mentioned are elementary and are universally recognized as such. Direction of administration belongs in this list. It is the proper

business of the executive to direct the doing of the things that it has been decided the body politic should do, whether it be much or little, or whoever has made the decisions.

### GROWTH OF ADMINISTRATION

Now one of the most impressive, indeed dramatic and amazing, developments of modern times in the field of government has been the prodigious growth of administration. This has happened simply because government has decided to do more things. Every time the body politic—the state, the city, the empire—decides to do more things, there must be an expansion of administration. Other functions of government have developed very little by comparison. Legislatures—parliaments, congresses, general assemblies, city councils—have hardly grown at all in size and are not likely to do so. They are somewhat busier than they used to be, and certainly they deal with bigger problems; but otherwise the legislative function differs little from what it used to be. So it is with the judicial function—there are a few more courts, a few more judges, and some congestion of litigation has come about; but on the whole the judiciary presents much the same picture that it always has presented. The elementary executive functions have grown a little too; but administration has left them all behind. It grows by leaps and bounds. One little decision may be made by a legislature, and overnight administration grows like a mushroom. The state decides to launch an old-age-pension system—a huge administrative structure must be set up to do the work. Congress decides upon a program of agricultural adjustment—at once there must be erected a vast administrative structure to carry the project through. A county or a city decides to embark upon a public-health program—and the same phenomenon occurs upon a relatively smaller scale.

This phenomenon—this startling growth of administration—has been apparent throughout the civilized world, and upon all levels of government, from the tiny school district up to the field of international relations. Everywhere government is reaching out to embark upon new undertakings, with the inevitable consequence that administration grows and grows as a governmental function and almost comes to dominate the scene. There are some who deplore this, but, no doubt, many more who applaud. Perhaps it is in order to consider for a moment some of the reasons why this phenomenon has been so marked in modern times.

So far as the United States is concerned, the opinion may be ventured that the American people have rapidly been losing their traditional



distrust and fear of government. Rightly or wrongly, it would seem, the American people are convinced that they can control their government and so are not afraid to have it reach out and do more things. People who were afraid of government would be unwilling to see administration grow and would want to curtail activities. There would seem to be little or none of that feeling in the attitude of the American people toward government today. Quite the contrary. The fears of yesterday appear to have been completely dissipated, and government is being pushed along at a breath-taking pace.

Also, the opinion may be ventured that people have come to see in government the only agency big enough and strong enough to correct the many economic and social ills that have accompanied our expanding industrial civilization. Many of the new administrative activities have to do with preventing evil business practices, protecting the public health, and compelling people to meet certain standards of propriety in their dealings with one another. Doctors must measure up to certain standards in order to be allowed to practice medicine. Theatre owners must see that their establishments are safe. Dealers in food must be compelled to respect the pure-food laws. All this means more and more administration and new administrative agencies must be set up to interpret and to enforce these regulatory laws.

But of even more significance is the obvious fact that people have come to want things that only government can provide on the scale demanded. The public wants a system of improved highways. The public wants beautiful parks and many of them; great hospitals and other institutions where the unfortunate can be cared for in the best possible way. The public wants more and more of education. Socially minded people look with great approval upon all this and are continually pointing to still newer things that government can do. And every step that government takes means a further expansion of administration.

It may be doubted if legislators themselves always fully appreciate the magnitude of the administrative tasks they create when they launch the state upon some of these vast undertakings. Few people realize, for instance, what a huge number of officers and employees are required to administer properly an enlightened program of relief and public welfare. Many who are in favor of the program will nevertheless object to setting up an adequate administrative staff to do it well, and the results are likely to be unfortunate. Many a splendid plan for social betterment has come to grief because the administrative agencies set up to do the task were altogether too small to do it properly.

So simple a law as one providing pensions for needy widows with

dependent children requires a considerable staff of competent investigators if the government is not to be shamefully imposed upon. A good parole law, providing for the parole of criminals, will become a mockery if not enough competent people are organized to administer it. A law requiring barber shops to maintain certain standards of cleanliness and sanitation is well-nigh useless unless an adequate staff is provided to see that it is lived up to by the barbers. And thus administration grows apace, and must grow, if government is going to keep on doing all those things that only government can do and that the public so much desires.

It may be said that state administration expands for three distinct purposes, or in three different general directions: (1) to do on a larger scale things that the state has always been doing; (2) to undertake wholly new things; (3) to take over or to supervise the doing of things that heretofore have been left to local government—the counties perhaps, or the townships.

Illustrations of the first type of expansion come readily to mind. For a long time states have been doing something in the field of higher education. In recent years most states have expanded their activities in this field to a very considerable extent, and further development may be expected. Not only have state universities grown larger, but other institutions, such as normal schools and agricultural colleges, have appeared. Indeed, so marked has this tendency been that today many students of administration believe that considerable reform is necessary in order to achieve better management and control of existing state educational institutions.

For many years state departments of agriculture have been doing good work in their field. But the field has grown enormously and today departments of agriculture are doing many things that could not have been thought of many years ago. For a long time states have maintained hospitals for the care and treatment of those who are afflicted with mental disorders. But the old-time insane asylum has given way to great new hospitals, which are able to care in a much better way for the different types of cases that appear. Thus it can be seen at a glance that state administration has been rapidly expanding within fields that have long been looked upon as proper and desirable fields of state administration.

In the second place, state administration has reached out into entirely new fields. States are undertaking to do today things that would have been considered a few decades ago as altogether unimportant or entirely outside their proper sphere of activity. The development and maintenance of park systems and recreational facilities afford good ex-

amples of this type of expansion. Half a century ago the maintenance of great park systems, coupled with programs of conservation of woodlands, lakes and streams, natural beauty spots, fish and game, would have been looked upon as foolish extravagance by a vast majority of state legislators. Today not only does the public approve, but it seems to want more and more of it. Old-age-assistance programs, public-health and welfare programs, must be administered. These things are relatively new in this country and our states are reaching out to put them into operation. Thus state administration is developing into newer fields. One of the very latest, and most interesting, of the hitherto untried fields is the sale of intoxicating liquors. Each state that has decided to do it has perforce been obliged to expand its administrative structure. And so administration grows.

But the third direction in which state administration has been growing is perhaps the most interesting of all. In this connection the state can be seen reaching down, as it were, and taking a hand in doing—not new things—but things that heretofore have always been left to the areas of local government—the counties, the townships, and the cities. In every state, in recent years, great inroads have been made into the realm of local government. Sometimes the state takes over the function entirely; more frequently it merely undertakes to exercise some measure of control. The most dramatic manifestation of this tendency has occurred in connection with highways. Almost overnight state highway commissions appeared in nearly every state to exercise some measure of direct control or supervision of highway construction and maintenance. Road building and mending has for generations been looked upon as a proper function of government; but it had been thought to be pre-eminently a function of local government. No longer is this so. The state has entered this field with rapid and enormous strides. Each year more states reach down and wrest control to a still further extent from county and township authorities. It should be said that the federal government has been very largely responsible for the speed with which this has been done. Very substantial sums of money have been offered to the states on condition that state highway departments be set up to administer the funds. This has been a potent argument, serving to push the states headlong into this field. But once they were in it, little more coercion has been needed. State highway departments have expanded their activities far beyond anything required by the federal government. And in order to exercise this new measure of control and supervision, of course the state administrative structure has had to be expanded.

Similarly, state administration has reached out into the field of poor

relief and public welfare—governmental functions heretofore left largely to the local areas. Even before the great depression came some states had set up welfare departments, chiefly for the purpose of giving advice to local officers. But that stage quickly passed. Again, under the compelling urge of the federal government, backed up with millions of dollars for relief, state departments were set up in feverish haste and these promptly undertook not only to aid the local areas but to control, to dictate, and to exercise authoritative supervision. Very clearly it was the tragic problems that arose in connection with the depression that drove the states into this field so rapidly. But there can be little doubt that now the states are in it to stay. The day of local autonomy in the realm of poor relief and public welfare has definitely gone. Huge state administrative agencies have been developed. Many of them are too big and clumsy, ill organized, and not well integrated. That was bound to happen, largely because of the emergency character of the needs that brought them into being. They will be somewhat deflated and reorganized as time goes on; but they are bound to stay, and without a doubt will undertake to do things in the interests of public welfare that never could have been done by the local areas themselves.

In the field of elementary education, too, the state is reaching down into the counties, the cities, the towns, the tiny school districts, and asserting a measure of authority and control that was not thought of a generation ago. And thus state departments of public instruction grow apace. State departments of police are invading the field once dominated by county sheriffs and city police forces. State tax commissions and boards of assessment and review are exercising an ever-growing measure of control over local tax authorities. State departments of finance are expanding rapidly to impose restraining hands upon local budgetary proceedings and to exercise at least a negative control over such matters as bond issues and the business of letting contracts.

This rapid expansion of state administration has not gone on without much argument and some misgiving. There have been those who have vigorously opposed the great expansion of the old familiar activities in which the states have always been engaged. These functions have been looked upon as proper, but many people have believed the state could not afford to reach out and do them on a larger scale. It has been said that the state cannot afford to provide higher education upon the great scale that has been undertaken, that the state cannot afford to maintain a great array of costly hospitals and other eleemosynary institutions. And there are always some who vigorously object

to the state's reaching into new fields, and who are inclined to condemn it loosely as state socialism. Furthermore, there has been much resistance, some of it of a political character, to the state's invasion of the field of local government. But despite all this, indications are that state administration is destined to develop much further than it has already gone in all three of these directions.

It is not the purpose to argue here the propriety of this great expansion of government into these new fields; but a word may be said in answer to those who profess to be alarmed at the ever-growing cost of administration. No wonder they are alarmed if they look only at the appropriation figures and the tax bills. But, if they would take what may be called a social point of view, they would see at once that most of this increase in cost is apparent rather than real. A few very simple illustrations ought to make this clear.

It may be assumed that the seven thousand insane people in a given state are somehow going to be cared for, fed, sheltered, and clothed and not left to die of starvation or exposure. They might be cared for, after a fashion, in their seven thousand respective private homes, by the members of their own families. It would cost something, to be sure; no one knows how much. But on the surface it would not appear to cost the state a cent. Conceivably, these helpless people might be cared for in one hundred separate county poorhouses. In total sum this would probably cost less than to care for them in their seven thousand homes; but now the cost would appear in one hundred separate county budgets. Still, scattered thus among one hundred counties, it might not seem to be very much.

To carry the illustration further, these seven thousand people might all be cared for in three or four great state hospitals for the insane. Now the entire sum looms up in one large figure to frighten those who fear that the burden of state administration is rapidly becoming too great for the state to bear. Of course this is nothing but an illusion. The one great sum is not so great as the total of the seven thousand little sums that were completely hidden in the private budgets of the seven thousand households, nor is it so great as the total of the one hundred sums that appeared in the county budgets. But if we view the state as consisting of several million people jointly possessing the sum total of the wealth of the state, then the actual cost of caring for these insane people has been materially reduced. Thus it is a mistake to say that the state cannot afford to do it. Broadly speaking, the state does it in any event. The burden cannot be escaped. Furthermore, this simple illustration ignores all the multitude of benefits that must be

measured in terms of more intelligent care, and the social values that lie in the relief of the misery and distress of patients and relatives alike.

That mounting costs of state administration are apparent rather than real could be shown with respect to nearly every one of the major fields of state activity, even though it may be impossible to set up actual figures to prove it. Who can tell how much is actually saved to the state through the regulation of the medical and other professions? A well-administered department of agriculture pursuing an enlightened program can effect savings to the state that utterly dwarf the costs of its administration. It will never be possible to measure with precision the material benefits that flowed from the extensive programs of highway improvement carried through during the past two decades. Of course it is quite possible to overdo these things. No commensurate social benefits would flow from paving every crossroad. The point of diminishing returns can definitely be reached in the matter of building highways. No doubt this has happened in many states; but well-trained highway engineers have now developed reliable techniques for determining highway needs, based upon measurable traffic requirements. A well-administered highway department would keep its programs within these limits.

In other fields of administration, notably education and the development of recreational facilities, the benefits and savings to the state may be intangible but none the less genuine. The chief point is that huge appropriations for doing all these things that are being done through administrative agencies do not by any means indicate that the state—as a social entity—is assuming greater financial burdens. Very frequently they mean just the contrary. To be sure the rapid drift in this direction is presenting many very difficult problems involving extravagance and waste. It is no wonder that some of them have not been dealt with wisely. The student of administration can help to solve a few of them.

One great problem has appeared in nearly every state because the administrative structure has been allowed to grow up in such a hit-or-miss fashion. The phrase “administrative structure” may be applied to the entire array of departments, offices, and other agencies that have to do with administration. The department of state, the attorney general’s office, the insurance commissioner’s division, the office of the superintendent of public instruction, the trustees of the state university, the state-fair board, the department of public welfare, the fish and game commission, etc., all taken together, compose the administrative

structure of a given state. The governor's office may be looked upon as the top of this structure although his powers may not be commensurate with the implications of that statement. And the structure furthermore includes the humblest office or agency that carries on activities in the name of the state.

### AGENCIES OF ADMINISTRATION

This administrative structure has grown very rapidly in every state. New boards, commissions, offices, and departments have been added at nearly every session of the legislature. This has been quite understandable. The state decides to launch into some new field; either the work must be done by some existing agency, or a new one must be created to do it. In either event, the structure is enlarged. This array of administrative agencies, which has grown up in a hit-or-miss and chaotic way, may be likened to a great building with many rooms and halls and corridors, some of them very large and important, some of them very small and remote.

For one thing, there are likely to be altogether too many separate and distinct agencies—too many offices, too many departments, boards, and commissions. At a given session of the legislature it is decided to undertake some new activity—the regulation of insurance companies, for instance. Conceivably this function might be thrust into the department of state or attached to the office of the superintendent of banking. Neither alternative seems quite appropriate, and a wholly new agency is set up to handle the function. Thus the structure grows. At another session of the legislature it is decided to open up and develop some state parks. Conceivably the function might be thrust into the existing department of agriculture or tied up with the board of conservation. Neither alternative seems quite appropriate, and so an entirely new agency is set up—a state-park board. Again the structure grows.

This story has been repeated again and again in state after state and the performance still goes on. Sometimes it is obviously desirable to add an entirely new agency to the structure. More often the proper thing to do is to merge and reorganize some existing agencies and to provide for the new function in connection with such reorganization. But to do that necessitates upsetting some administrative machinery that has been in existence for some time. The people connected with this existing service are more than likely to be opposed to any material changes, and so, for this and many other reasons, the legislature finds

that the line of least resistance lies in letting the existing machinery alone and in setting up some wholly new agency to carry on the new undertaking.

This tendency is aggravated many times by the very people who are most vigorously promoting the new activity. Be it a program of conservation or a scheme to regulate public utilities, to supervise real-estate operators, or to maintain a state orphanage, those who are behind the project become so imbued with the importance of the thing they have in mind, they are so fearful that their project may fall through if the hostility of certain groups is aroused, that they are only too willing to push along the line of least resistance and thus to have a new and separate agency set up to carry on their own pet undertaking.

The result is, clinging to the analogy of a building, that new "rooms," additions and enlargements, are added to the existing structure. The administrative structure tends to become a great rambling labyrinth of offices, departments, boards, and commissions. It is as if new stories were built on top of the structure, lean-tos added on the sides, bay windows constructed, and sheds strung out along the back of the main building. In some states more than one hundred separate and distinct agencies of administration have thus appeared. Very few states that have not reorganized in recent years have fewer than sixty or seventy such agencies.

It is conceivable that even so many administrative agencies could be organized into a well-integrated, smooth-working administrative organization; but the student of administration is very much inclined to doubt it. There simply are not so many truly distinct functions of government that require separate agencies of administration. On its face, a structure that embraces so many agencies, offices, and departments betrays a certain amount of overlapping jurisdiction and a great deal of duplicated effort and wastefulness.

Nevertheless it is easy to understand how these huge, unwieldy administrative structures have come to be. It is also easy to understand why it is very difficult indeed to change them. In the first place, the people who are working in a given department of administration are likely to be unanimously of the opinion that few changes are necessary. They will acknowledge the desirability of small changes here and there and will recognize the possibilities of increased efficiency and greater economy in connection with this or that aspect of their work; but they are likely to be unalterably opposed to major changes that might affect their independent status, might lead to a reduction of personnel, or might lower the department in the scale of importance.



Since major changes almost inevitably do involve reduction of personnel, often the abandonment of certain agencies and the subordination of certain people who formerly were independent of superior authority, it is not to be wondered at that people whose positions might thus be affected present a solid front in their resistance to change. Their motives are by no means always consciously selfish. It is a great mistake to assail those people who hold administrative positions with charges of selfishness and a desire to hang on the body politic like suckers. They are usually quite sincere in their belief that the work they are doing is important and that it could not be done much more efficiently or economically than they are doing it.

The irony of the situation is that from one point of view they may be quite right. Their failure to appreciate the need of changes lies in their very limited, circumscribed, and narrow outlook. They are so engrossed with their own immediate tasks that they do not see the entire picture. A department of health may send out inspectors to inspect hotels and rooming houses with a view to enforcing sanitary regulations. The industrial commissioner's office may have inspectors on the road doing similar work with respect to factories and industrial establishments. The members of each staff, viewing their own activity by itself, are thoroughly convinced, and no doubt properly so, that they are doing their work effectively and economically. Nevertheless an impartial observer could see the great economies that would result from merging the two functions. But this would necessitate a reorganization in which some people would lose their positions; others would lose their rank and prestige and their sense of importance would be impaired. Thus, for many reasons, partly selfish, partly sincere, those already in an administrative structure are likely to oppose any major changes in it, except mere enlargement.<sup>2</sup>

This is an important consideration, for these people are a very great power in politics—a much greater power than they ought to be. In England and on the Continent administrative officers and the rank and file of government employees do not exert the influence in politics that they do here. In this country they are very powerful and when they and their relatives and friends bring pressure to bear upon the legislature, it is sure to count heavily. In this situation, then, lies one explanation of the difficulty of bringing about major changes in administrative organization.

<sup>2</sup> On this subject former President Hoover says: "No one with a day's experience in government fails to realize that in all bureaucracies there are three implacable spirits — self-perpetuation, expansion, and an incessant demand for more power." *The Challenge to Liberty* (New York: Charles Scribner's Sons, 1934), p. 115.

Another reason is that a great many people who are much interested in one particular administrative activity fear that any changes in organization will result in lessened activity, lower appropriations, and a change in emphasis. Thus people who worked long and hard to build up a fine department of public health may vigorously resist merging it with a newly conceived department of public welfare. These people are not personally concerned, as are the actual employees themselves, but they do begin to apprehend that, as a result of the merger, the services in which they have been so keenly interested may tend to be minimized and thrust aside. Valiantly they rally to protect the agency that they helped to build up—and thus a most desirable piece of reorganization is completely thwarted. People interested in public parks will resist combining the service in which they are interested with a fish and game commission or a board of conservation. The loyal alumni of rival state educational institutions will resist merging the controlling agencies; and so the legislature gives up in despair.

Furthermore, the task of reorganizing a structure that has grown to vast proportions would be difficult enough even were it not for all this resistance. There is no authoritatively correct way to do it. In so far as there are any real experts in this field they could not be expected wholly to agree upon plans of reorganization. There is no such thing as a correct house, in the sense that other houses are incorrectly built, although, to be sure, there are good houses and bad houses as measured by accepted principles of architecture and construction. Just so there is no exclusively correct administrative structure. Indeed there is so much room for difference of opinion, and the judgment of experts is so far from being uniform, that any proposed scheme of reorganization is almost sure to encounter a withering storm of criticism from which it is not likely to emerge unscathed.

So it has come to pass that in every state the administrative structure has slowly been built up through long years in an aimless fashion, a new agency added this year, another next year. Rarely has any effort been made to fit these agencies together into a harmonious whole. They are largely disconnected, independent, and vigorously resistant to change. Seldom do legislatures rouse themselves to the point of making drastic changes. Sometimes small reorganizations are effected piecemeal. Perhaps some state that has not had a department of agriculture will take several disconnected agencies, such as a weather and crop service, the state veterinary's office, and the bureau of animal health, and sweep them all together into a newly created department of agriculture. Occasionally a group of state eleemosynary institu-

tions that have been functioning under separate boards will be swept together under the control of one. Such sporadic reorganization measures are better than none at all and do prevent the further elaboration of the ever-growing administrative structure.

### CONTROL AND SERVICE AGENCIES

The agencies of administration that have been piled up in this way are of every type and description, for they have been set up for a great variety of purposes. Some of them are control agencies; some of them are service agencies. A control agency may be looked upon as one that is concerned primarily with enforcing regulations, with fixing standards, with compelling people to obey them, with conducting inspections and exercising authoritative supervision. Thus many of the state administrative departments are control agencies. The best example is a state police department, but the state fire marshal's office, if there is one, is doing the same sort of thing. A department concerned with the administration of a pure-food law, with the enforcement of the laws defining standard weights and measures, with the interpretation and enforcement of building codes or factory regulations, is a control agency.

On the other hand, a state highway department or a public-welfare department should be looked upon as a service agency, for it is concerned primarily with rendering service rather than with exercising authoritative control. Students of administration believe that so far as possible the functions of service and control should be segregated, that in so far as it can be avoided no one agency should exercise both. One reason for this is that the exercise of control functions will almost always arouse some suspicion, hostility, and resistance on the part of a considerable portion of the public. Such an attitude greatly hampers the work of a service agency, which, on the other hand, should be meeting with the most cordial public response wherever it goes.

Obviously it has not been possible to adhere literally to this principle of administration. A department of agriculture, for instance, is primarily a service agency, but it will usually be found exercising some control functions in inspecting dairies or in suppressing disease among farm animals. The functions cannot be wholly segregated but in building up the administrative structure the principle of segregation has often been completely ignored. This fact has tended to make administration less effective than it otherwise might have been.

## NAMES APPLIED TO AGENCIES

The indiscriminate way in which agencies are named adds something to the confusion. In looking over the list of administrative agencies in any given state one might well wonder if certain terms have any precise significance at all. The familiar terms, department, bureau, division, board, commission, office, are used quite indiscriminately. It is true these terms cannot be exactly defined, but they do connote different types of agency and this fact ought to be recognized in building up a well-organized administrative structure. The term "department" may be reserved for the largest and most important agencies of state administration. Thus there are departments of state, departments of finance, departments of agriculture, public instruction, and public welfare. Departments dominate the principal broad fields of administration. There can be no exact rule as to how many there should be—as many, perhaps, as there are well-defined, important fields. Most students of administration would agree that there should be at least nine or ten. Few would contend that there need be more than twenty.<sup>3</sup>

It is the practice in the federal government to use the title "secretary" for those who are department heads. This is not always done nor does it need to be. The head of a department of justice is the attorney general. The head of a department of state police may be called the superintendent, though he might well be secretary of the department of public safety. The state auditor often presides over an important department of state administration, though he might be a subordinate in a department of finance presided over by a secretary. The matter of terminology is not vitally important but nevertheless it is desirable to adhere so far as possible to terms that imply the same thing when applied to various agencies in a given administrative structure.

"Bureau" is a term quite generally applied to the principal subdivisions of a department if the term is used at all. If the work of a department is so highly unified that everybody in it is doing the same sort of thing, subdivisions seem to be unnecessary. But this is rarely,

<sup>3</sup> "The number and character of the departments should be determined by the conditions within the particular state and the scope of its existing activities. However, the total number of departments in any state government ought not to exceed twelve or fifteen." A. E. Buck, *Administrative Consolidation in State Governments* (New York: National Municipal League, 1930), p. 5.

"The Massachusetts constitutional amendment of 1918 providing for the establishment by law of not more than twenty administrative departments represents, in principle, the extent to which it seems desirable to go in adopting positive constitutional provisions regarding the administrative organization." John Mabry Mathews, "State Administrative Reorganization," *American Political Science Review*, XVI (1922), 388.

if ever, the case. Usually there are several distinct types of activity carried on within a department, all directed to the same ultimate end, of course, but none the less distinct. A police department has to do clerical work as well as to patrol the highways. A department of education has to do statistical work as well as to promote education. Most departments can advantageously be subdivided into bureaus with bureau chiefs in charge. The bureau chiefs are the immediate subordinates of the department secretary.<sup>4</sup>

If there is need for it, bureaus could be further subdivided into divisions with division superintendents in charge. This elaborate subdivision has been worked out in the federal administrative structure but seldom is it necessary or desirable in state departments to carry this subdividing very far.

### STAFF AND LINE

Occasion for such subdivision arises when a distinction is made between staff and line activities.<sup>5</sup> The terms are borrowed from the military but have come to have some new implications. The staff serves and helps the line. In the realm of administration the line agencies are

<sup>4</sup> See E. Pendleton Herring, *Public Administration and Public Interest* (New York: McGraw-Hill Book Company, Inc., 1936), Chapter XX, for an excellent discussion of administrative reorganization and the application of these terms.

<sup>5</sup> "By staff agency we understand a specialized office the members of which are regularly engaged in assisting the chief executive to perform his administrative duties, (a) by furnishing him information on the basis of which he may make his administrative decisions, and making the necessary investigations therefor, (b) by taking care that these decisions are executed by department heads, and (c) by performing, or supervising the performance of some or all of the institutional services such as accounting and reporting, recruiting and purchasing, and certain control functions such as revision of budget estimates, approval of allocations, approval of expenditures, control of printing, auditing, and the like." Leonard D. White, *Trends in Public Administration* (New York: McGraw-Hill Book Company, Inc., 1933), p. 182.

"... the distinction has been made between the activities which operating services have to perform in order that they may exist and operate as organizations or institutions, to which the term institutional is given, and those that they must perform in order to accomplish the ends for which they have been established and are being maintained, which were designated as functional." Willoughby, *Principles of Public Administration*, pp. 56, 57.

"Primary or functional activities are those which a service performs in order to accomplish the purpose for which it exists. Institutional or housekeeping activities, on the other hand, are those which it is necessary that a service shall perform in order that it may exist and operate as a service. . . . Primary activities are, thus an end in themselves; institutional activities are but a means to an end." *Ibid.*, p. 105.

"The functions of the state government may, from one point of view, be classified into direct and indirect. The former aim immediately at the accomplishment of the objects for which the government exists, while the latter are intended to supply the means or instrumentalities necessary for the performance of the direct functions." John Mabry

directly engaged in doing the work for which the department exists. Within the department there may be staff agencies to render assistance. Thus, as intimated above, a department of education may have need for a statistical division. While the purpose of the department of education is not to gather statistics, its real work can be carried on much more effectively if educational statistics are compiled and made available to the other agencies within the department that are doing the main work for which it was created. Thus the statistical division would be a staff agency serving the line agencies. Many departments have much legal work to do. Studying law is not the purpose for which they exist, but a large department charged with supervising banks, building and loan associations, and other private financial institutions might well have need for a legal division, which would be a staff agency doing the legal work for those engaged in the main activities of the department.

This idea has many applications and it can easily be carried altogether too far, thus leading to unnecessary complexity. Many so-called staff activities can be carried on incidentally without resort to separate organization. Some staff services, such as purchasing, are so important as to justify setting up a major agency to do this work for all departments. There is no clear rule concerning this matter of subdividing departments.

#### BOARDS AND COMMISSIONS

Much quibbling has been engaged in as to the significance of the terms "board" and "commission." In every state administrative structure, there will be found a very considerable array of both. One thing is clear: state legislatures have recognized no distinction whatever between the terms. They seem to have used the term that sounds best without regard to implications. Clearly, both words apply to plural agencies, that is, to agencies composed of three or more persons of co-ordinate rank. Certainly the terms contain no implications as to the method of selection, for boards and commissions are composed indiscriminately of people who sit *ex officio*, those who have been appointed to their positions, or those who have been elected to them.

Even if it were desirable, it would be futile to try to bring about a

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Mathews, *Principles of American State Administration* (New York: D. Appleton-Century Company, Inc., 1917), p. 215.

See John M. Pfiffner, *Public Administration* (New York: The Ronald Press Company, 1935), pp. 53-57, for a discussion of "Staff and Line."

See Walker, *Public Administration in the United States*, Part II, for a detailed treatment of staff functions as they appear on all levels of government.

thoroughly consistent application of these terms. Nevertheless there are two very clearly recognized types of plural agency in the realm of administration. There is the agency composed of laymen, that is, of people who have no claim to expert knowledge and who are not going to give anything like full time to the state. They sit from time to time, may have great power, or may exercise only an advisory function. They usually receive no pay at all, or merely a moderate *per diem* allowance plus expenses. Such an agency is properly called a board. Familiar examples are boards of education, boards of health, and conservation boards. They vary greatly in composition, size, and power. But the characteristic thing about the board is that the members sit in the background and exercise some measure of influence or control. They are not engaged full time with the actual work of administration.<sup>6</sup>

The other type of plural agency, usually called a commission, is composed of people selected because of their special fitness for the work. They put in full time, on full pay, and are directly concerned in the actual work for which the commission exists. A railroad commission is a good example, as also is a civil-service commission. But whether or not the terms are used in the manner here suggested—and

<sup>6</sup> “. . . A board, properly speaking, is a group of members who are required to act collectively upon all matters falling within their jurisdiction. It may be that the members act individually in the way of securing data, conducting preliminary hearings, etc., but no action is taken by them except as a body. A commission is a group of members having the duty not only of acting collectively as a board, but also of serving individually as heads of organization units that have been set up for the performance of administrative work that has to be done.” Willoughby, *Principles of Public Administration*, p. 135.

“Properly speaking, a commission is a group of persons who have been assigned to the full-time task of administering some activity. . . . The members of a commission are presumed to be expert technicians whose special training fits them to carry on the commission's work; otherwise they are unfit to serve as commissioners. A board, on the other hand, is a group of persons who serve only part-time in the performance of the specific duty for which the board has been created, and entrust the actual details of administration to a full-time technician whom they hold responsible for results.” Austin F. Macdonald, *American State Government and Administration* (New York: Thomas Y. Crowell Company, 1934), pp. 290, 291.

“The terms ‘board’ and ‘commission’ are frequently used interchangeably, but a distinction should properly be made between them. By a board is meant a body of laymen whose function is merely advisory or supervisory. They give only a part of their time to the work and merely supervise the subordinate officers in charge of the actual administration. A commission is a body composed of men to whom is intrusted the actual work of administration and they generally give their whole time to it.” John Mabry Mathews, *American State Government* (New York: D. Appleton-Century Company, Inc., 1924), p. 259.

“While certain authorities recognize a distinction between a board and a commission, the difference is not essential to our discussion. The terms will be used here interchangeably as being synonymous.” Pfiffner, *Public Administration*, p. 66.

frequently they are not—these two kinds of plural agencies are everywhere to be found. Often a legislature will set up one type where the other would be far more appropriate. Failure to recognize the appropriate uses of boards and commissions has contributed much to the inefficiency of state administration. Recognition of their proper uses is far more important than the proper use of terms.

Not only have legislatures been rather indiscriminate in their use of terms—indeed, to such an extent that agencies alike in every essential respect have names that convey wholly different implications—but they have resorted to a great variety of methods of constituting the various administrative agencies. This practice, no doubt, has had some experimental value, but its effect upon administration has certainly not been good. It will be appropriate to survey some of the familiar methods of constituting agencies of administration.

### CONSTITUTIONAL AGENCIES

In any state a few agencies are likely to be such that the legislature has no power to alter them. This is true because they are provided for in the constitution. The governor's office, of course, is provided for in the constitution of every state, and that office is the most important of the agencies of administration, although the actual power exercised by the governor differs widely from state to state.

The governor is invariably elected by popular vote, and that is one familiar method of constituting an administrative agency. A few offices other than that of governor are often provided for in the constitution and made elective by popular vote. This is likely to be true of such offices as those of the secretary of state, the attorney general, the state treasurer, and the auditor of state. Sometimes the list of constitutional offices is much longer than this and includes the superintendent of public instruction, a secretary of agriculture, and others. Such a situation is unfortunate. And it is still more unfortunate when the constitution provides for various boards, commissions, and departments, as is sometimes the case. Indeed, from the point of view of the student of administration, it is desirable that no administrative office other than that of governor be provided for in the constitution.

Among the various reasons why this is so, just two very important and fundamental ones need be mentioned at this point. One is, that to provide for an administrative agency in the constitution is to guarantee for it a measure of independence and irresponsibility that tends to destroy team work and co-operation; the other is, that changes



become difficult. Each of the officers thus provided for is conscious of an absolute independence of every other officer, even of the governor. Each of them believes himself to be in a closed compartment all his own. He attends to his own affairs in his own way and is more than likely to resent anything that could remotely be regarded as interference with his office. This tendency is so strong that many individuals occupying these offices take a positive satisfaction in defying the governor and their fellow officers and make political capital out of their own aggressive independence. In an administrative sense they are responsible to no one except the people, which still means no one, for the public is in no position to judge of administrative efficiency or to exercise administrative control. Within the broad limits of the law these officials carry on their duties just as they please, conscious of no compelling obligation to co-operate with or to work in harmony with other offices and departments.

A multitude of evils great and small inevitably flow from this and make for bad administration. It is becoming ever more and more obvious that administration ought to be looked upon as one great unified task. Those who are in charge of the various agencies of administration should consider themselves members of one team pulling together for a common end, namely, the effective administration of the policies determined upon by the legislature. What one department does or does not do is of very great importance to various other departments. Failure of one department to do as it should may seriously impair the efficiency and effectiveness of many other departments. It is idle to say in a spirit of aggressive independence that, if each department will mind its own affairs and obey the law, they will all get along very well. That is not so. The point can be illustrated by reference to two of the oldest and most firmly established constitutional offices in the whole structure of American state government—the secretary of state and the attorney general.

The first of these performs a great variety of duties, among them the keeping of records and the compilation of various statistical data. If this work is not well done, and if the results of such work are not made available to other departments in a spirit of helpfulness and co-operation, their own efficiency is seriously impaired. The attorney general's office is expected to render aid of one sort or another to nearly every other agency in the entire administrative structure. If this is not done promptly and competently, the efficiency of the entire state administration will suffer. Anything that makes for aggressive independence and a sense of irresponsibility in either of these departments is

more than likely to produce these troubles. To provide for such independence in the constitution is to guarantee trouble in the most effective possible way.

The illustrations offered are extremely simple; they are little more than hints. Many others could be adduced and elaborated. That is unnecessary. The point is, that agencies of administration are inextricably involved with one another in many different ways. If they do not work together harmoniously, administration will be the worse for it. In organizing an administrative structure this should always be kept in mind.

It should not be inferred from this discussion that state constitutional officers are constantly at loggerheads and openly working at cross purposes, although unfortunately this is too often true. It is possible that the direct primary has tended to aggravate this evil, since it has tended to emphasize the independence of officers thus nominated. The real evil is far more subtle than open warfare. Being reasonably sensible people for the most part, and conscious of their own political futures, these independent officers do not trouble one another very much. A wise governor does not try to dictate to another constitutional officer—he shuts his eyes to evidences of unco-operative practices. The secretary of agriculture does not openly complain of the attorney general's indolence—he resignedly puts up with it. The superintendent of public instruction does not openly criticize the secretary of state—he ignores the slovenly character of the work being done in that office. Here lies the real evil, of which the public may be quite unaware.

Providing for administrative agencies in a constitution is not the only way of making them aggressively independent—it is merely the most obvious and effective way. That is why the matter has been discussed at this point. Arguments in favor of having the principal officers of administration provided for in the constitution and made elective are very old and have lost much of their force. For the most part, they reflect fear—fear of concentrated power in the hands of the governor, fear that the people will lose control of their government, fear that nonelective officers will be indifferent to the public will and become arrogant. These evils are very real and they should be guarded against. But it should be realized that they can be guarded against in other ways that are more effective.

Another very important reason for not providing for administrative agencies in a constitution is that change becomes very difficult. As pointed out before, administration is growing very rapidly. Problems that never were thought of before have appeared in great number.

It frequently becomes desirable to reorganize agencies of administration, to consolidate them, to reallocate functions and to establish new lines of responsibility and control. If certain agencies have been made rigid by constitutional provision, these changes become almost impossible. Much as they may desire to bring about changes in the interest of efficiency and economy, the legislators find their hands tied. It may be impossible to carry out new ideas about accounting, budget-making, and auditing because of an auditor's office created by a constitution. In some states new departments of finance have been set up by the legislatures, which leave the elected auditor or treasurer quite apart, in isolation, bereft of certain of his former functions. This is a makeshift way of getting round a difficulty caused by the constitutional provision. Some admirable schemes of reorganization propose the elimination of the department of state. Such elimination cannot be effected if that office is fixed in the constitution. New ideas for the development of public education or of agriculture may be obstructed by constitutional offices standing in the way—offices that were created two or more generations ago.

A legislature ought to be free to reorganize administration. It is a curious thing that people who advocate the establishment of important offices in a constitution deny the very principles of democracy that they so often invoke. They would deny a right to the present generation to do as it wishes to do through its own elected representatives, and would subject the present generation indefinitely to the will of the dead past. Fortunately, the list of agencies provided for in constitutions is not very long and ways are being found to obviate many of the difficulties that grow out of these constitutional provisions. However, it is eminently desirable that, when constitutions are rewritten or amended, they should not provide for many administrative agencies.

#### STATUTORY AGENCIES

If administrative agencies are not provided for in the constitution, the legislature provides for them. Thus, obviously, a vast majority of the agencies to be found in an administrative structure have been created by statute. In the early days, when a legislature had before it the problem of establishing a new office, comparable in many ways to the existing offices as provided for in the constitution, the inducement to make the new office elective and the term the same as that of existing chief administrative officers was very great. Thus, as new offices appeared, such as superintendents of public institutions, secretaries of agriculture, and labor commissioners, they were added to

the elective list and the ballot's burden was thereby increased. So it has come to pass that in most states a few of the chief administrative officers are made elective by constitutional provisions, others by statute. The principal difference between them, then, is that the latter can be abolished or otherwise dealt with by the legislature, and the former cannot. This becomes a very important matter when it comes to bringing about administrative reform; but, except for that, the statutory offices differ very little from the constitutional ones.

### ELECTION OF ADMINISTRATIVE OFFICERS

Reasons why legislators followed in the path marked out by old constitutions and proceeded to set up elected administrative officers are clear enough, even if they are not convincing to a modern student of administration. It was thought to be the democratic way. It was thought to make popular control effective and to guard against concentration of power that might be exercised in an arbitrary manner. Even today a very considerable public opinion is in favor of keeping many of the chief administrative officers elective.

There is another reason too why legislators were inclined to extend the list of elected administrative officers beyond those provided for in the constitutions. The new office would seem to them to be quite as important as the old constitutional offices. To put it on an appointive basis instead of having it elective would seem to place it on a distinctly lower and less important level. For instance, a newly proposed office of secretary of agriculture would seem to be every bit as important as that of secretary of state or treasurer, but to make it an appointive office, in the hands of the governor, would seem to make it a distinctly subordinate position on a lower level of prestige. Hence many a legislator, realizing the impossibility of altering the status of the constitutional offices, would vote for making the new office elective, although he was quite aware that in the interests of good administration they ought all to be appointive. Thus the list of elected offices grows, even to the extent of including state printers, fire marshals, and game wardens.

Of course this procession of elective administrative officers has to end sometime; but there still remain a considerable number of them in most states. It would seem to be unnecessary to do much more than mention the chief arguments against the election of administrative officers. Above all things an administrative officer ought to be thoroughly competent in his own field. But an elective official must needs be competent to do just one thing—to run a campaign and get votes.

He may also prove to be a competent administrator. If so, that is a fortunate accident—he must be a good politician. The electorate has no way of knowing whether or not he is competent in his field. If he develops the political skill of a vote-getter, he does not need to have any particular ability as an administrator. To capture the office of state auditor, superintendent of banking, secretary of agriculture, state printer, or insurance commissioner, he need be only a good vote-getter, if, indeed, those offices are elective. He may quite possibly be among the least competent of those who profess to have special knowledge in those fields. Indeed, ironically enough, the least competent people seem to be the ones chiefly impelled to seek the elective positions, and often show the most skill in getting them.

Furthermore, the elected officer is wholly irresponsible in an administrative sense. Responsibility to the people means little or nothing. The public cannot know whether or not a treasurer has been truly competent, or whether or not an insurance commissioner really knows his business. The public will know if disgraceful scandals have developed in the office; but, except in that rare circumstance, it must rely upon the boastful campaign speeches of the officer himself and the equally unreliable disparaging statements of his political opponents. All this is very discouraging, if not positively offensive, to the truly competent and efficient administrator. He wants his skill and ability to be recognized and appreciated by those who are really in a position to judge, and does not want to be obliged to boast about himself, to answer the slurs of his political opponents, and to beg votes from people who know nothing about his work. The simple truth is, the most competent of men frequently will not do it. Popular election very definitely shuts off from public office a large proportion of the ablest people.

In addition to this, it should be said that an administrative officer should not be subjected to the constant political pressure that is always applied to elective officers. A state auditor, a commissioner of health, or a superintendent of public instruction should not have to be thinking constantly of maintaining his political fences. He should do his work well, as he thinks it should be done, and not have to be fearful of political consequences. There is no more paralyzing influence operating through state administration than this constant fear of political consequences. It is paralyzing in the sense that it causes men to refrain from doing what they know ought to be done, to be quiet, to overlook conditions that ought to be dealt with aggressively, and to let things slide along in the belief that it is politically wise to do so. It is impossible to measure the deadening effect of this influence. Popular

election is indeed the proper way to select a representative, or to choose a chief executive, who is something more than an administrator; it certainly is not the way to select a competent administrative officer.

#### APPOINTMENT OF ADMINISTRATIVE OFFICERS

When administrative officers are not elected, they are likely to be chosen in one of two other ways. They are appointed by the governor, or else they are appointed by a board or commission, the members of which have been selected in one of a variety of ways. These appointed officers might be chosen by the legislature; but this method of selection has been universally recognized as undesirable. The inevitable logrolling and political machinations that accompany the selection of administrative officers by the legislature argue overwhelmingly against doing it, to say nothing of the deep-rooted American tradition concerning the tripartite division of powers.

In case the governor appoints, several variations in practice appear. He may be given a free hand to appoint whom he pleases. This practice is in favor with most students of administration. He may make appointments with the consent of the senate. This practice is very widespread, and there is much to be said in favor of it and against it. But there appears to be a very definite tendency to extend the appointing power of the governor. Whether or not this power of appointment is accompanied by authoritative control over the appointee depends upon many considerations other than the mere power to appoint. The power itself may mean much or little, but in every state administrative structure there will be found a large and ever-growing array of important administrative officers who have been named by the governor.

There is also to be found in every state administrative structure a formidable array of boards and commissions varying in size from three to twenty-odd members. The members of these plural agencies are selected in a variety of ways, all of which are likely to be illustrated in every state. The members of some of them are popularly elected. Thus, in some states the members of the board of trustees, or regents, who control the university may be popularly elected. In some cases the members of boards that govern state hospitals or other institutions may be elective. However, this practice is not growing, and such elective boards as now exist are likely to be abandoned whenever occasion arises. There is little to be said in favor of this method. It may be defended as a method of guaranteeing a large measure of independence for the institution thus controlled, but that considera-

tion is of doubtful value and in any event does not outweigh the arguments against popular election.

Some boards and commissions are constituted *ex officio*—that is, the members of these boards occupy their positions by virtue of the fact that they hold certain other offices. Thus an executive council, or a board of audit, or a state-fair board, or a board of election commissioners, may be composed of the governor, the secretary of state, and the attorney general, or of some other officers sitting together. Unless the function to be performed by such a board is of a very trifling, casual, or perfunctory character, this is an exceedingly bad way to constitute its membership. The reasons are obvious. These officers should be fully occupied with duties in their respective domains. Responsibility is effectively scattered. There is much danger that the members will give only the most casual and perfunctory attention to the problems before the board; and attention is distracted into various unrelated activities. Governors, presidents of universities, attorneys general, and other distinguished officeholders are likely to find themselves members of a considerable number of such agencies in which they have no interest whatever. This is very bad for administration. The *ex officio* device has very little to recommend it. Legislatures are tempted to resort to it for two reasons. It lends an air of importance and distinction to the agency to have these outstanding personages seemingly in control. A still less worthy consideration is that it may obviate the necessity of paying compensation to some additional officers. Neither of these considerations has much merit.

Another way, and the usual way, is to allow the governor to appoint the members of these plural agencies, with or without the consent of the senate. Tenure of office is in many cases of the overlapping type—that is, the terms of the members do not all expire at the same time. This tends to weaken the control of the governor, but the practice does have some advantages. Another curious restriction upon the appointing power of the governor in connection with naming the members of boards and commissions is that not more than a bare majority of the members shall belong to the same political party. Thus, if the highway commission or the utility commission or the board of public welfare be composed of five members, not more than three may belong to the same political party. The reason for this is obvious, but it is a most unfortunate device for trying to obviate a possible abuse. Practical politicians are so keenly aware of the possible abuse that they are blind to the evils that flow from the safeguarding device. This restriction effectively guarantees that every appointee must have a definite and well-known partisan record. It guarantees

that the board will be bipartisan, never nonpartisan. The man without a party record and having no definite party affiliation, is unavailable no matter how well fitted he may be for the position. Thus partisanship is forcefully injected into administration, which is always a bad thing. There can be no denying that the device has prevented some serious political abuses, but these abuses have been prevented at considerable cost.

### CONCLUSION

The purpose in this chapter has been to present a panoramic view of a typical state administrative structure. The student will be able to find illustrations of nearly every type of administrative agency in his own state. At the top will be the governor. Next in order will be a number of principal administrative officers, popularly elected, and provided for in the constitution. Next to them are likely to be some equally important so-called heads of departments, popularly elected, but provided for by statute. In addition to them there will be a considerable number of administrative officers who are appointed by the governor, subject to a variety of restrictions. And finally, a long array of plural agencies of every type and description completes the structure.

These agencies carry on the administrative activities of the state. In some states there will be found from fifty to one hundred such agencies, or even more. In a few states drastic reforms have been achieved and the number of agencies has been greatly reduced. Everywhere the state administrative structure has been subjected to severe attack. It is said to make good administration almost impossible. Lack of responsibility, overlapping of function, duplication of effort, lack of co-operation, inefficiency, wastefulness, indolence, and creeping paralysis are thought to afflict administration; and politics in an evil sense is said to pervade the whole. These criticisms must be examined, and, if possible, sound principles of administration must be shown to be applicable to the problems of the state. That is the purpose of subsequent chapters.



## CHAPTER II

### THE GOVERNOR AS CHIEF ADMINISTRATOR

It has already been pointed out that the direction of administration is one of the most important executive functions. It is by no means the only executive function, but it certainly is becoming more and more important as the years go by and government reaches out to do more things. Conceivably the direction of administration might be a function exercised by committees of the legislature. A legislative committee might be set up to exercise administrative control over the state educational institutions. Another might exist to manage public works and highways; another to control the department of agriculture; and additional committees might be created to administer the various other departments. Thus the field of administration might be very effectively dominated by the legislature itself. But this method is not good; it is hardly necessary to do more than mention it to brush it aside as having nothing to recommend it. Experiments in this direction have not been in the least encouraging, and fortunately there seems to be no disposition to experiment further. Relics of that method are found in the older types of city government, wherein committees of the city council have charge of administrative activities. This practice is one of the most formidable obstacles to improvement in city government. Control of administration should be looked upon as an executive function and should be vested in a chief executive, subject to proper limitations.

Yet even the courts have some very impressive administrative powers. In recent years bankruptcies, mortgage foreclosures, and forced reorganizations of business establishments have foisted upon the courts huge administrative tasks—authoritative control over great industrial concerns and the management of extensive properties. Courts should not exercise such functions. To be sure a very important judicial function needs to be exercised in connection with these developments, but that is no reason for permitting the judiciary to embark upon vast projects in the field of administration. Few states were prepared to deal with this huge unexpected problem of administration, nor was even the federal government itself. The judiciary exercised the function because there was no other agency to do it. Never-

theless such functions are administrative in their nature, and direction of administration belongs properly in the executive branch of government.

### DUTY TO EXECUTE THE LAW

Most state constitutions give reasonably clear expression to this concept by stating in one way or another that it shall be the duty of the governor to execute the law or to see that it is executed. In a broad sense, this would seem to imply that, whenever the legislature has decided that a thing shall be done, and has enacted a law concerning the matter, it devolves upon the governor to see that it is done. This is expecting too much. To assume that, when a legislature has authorized a huge program of highway construction, an elaborate scheme of public welfare, or an extensive project in the field of education, it becomes the governor's duty to see the undertaking through is perhaps to assume too much. Nevertheless, in theory that is clearly the implication of the law. And the idea is fundamentally sound.

However, despite this sound constitutional theory, laid down in the brave words of many a state constitution, the history of the governor's office since the end of Colonial days is one long record of fairly successful efforts to make it well-nigh impossible for him to do what he is supposed to do. The reasons for this are clear enough. The men who made the laws in early days were very fearful of the governor's office. They had had bitter experience with arbitrary, dictatorial governors. They were much inclined to exalt the legislature and to minimize the governor. Thus, having made him chief executive, they found many ways to curb his power. One very effective way was to make it exceedingly difficult for him to exercise authoritative control over administration. There are many indications that in contemporary times the tide has turned. These obstacles are rapidly being removed, and governors are acquiring a much larger measure of power than they ever had before. Indeed, many people seem to fear that the pendulum may swing too far in the other direction and that governors are destined to become the powerful autocrats that the early constitutional fathers feared they might become.

### METHODS OF SELECTION

All the state governors are popularly elected, but terms range from two to four years. It would almost seem to be idle to argue in favor of any other method of choosing governors in the American commonwealths. There are some admirers of the parliamentary system of

government who would like to see that scheme tried out in one of the states. They believe that the tripartite division of governmental powers, rendered more or less rigid in a written constitution, is not a desirable form of government, and that it is particularly weak as respects administration. The advent of single-chambered legislatures—a notable break with tradition—may give heart to those who would like to see the parliamentary system introduced. Of course it would not be impossible to try it out. Were it to be attempted by one of the states, the elected governor would disappear. Direction of administration would fall to the lot of some officer comparable to a prime minister who would be fully responsible to and removable by the legislature. It is interesting to speculate upon the possibility of such an experiment in one of the states, but the likelihood of its being tried would seem to be very remote indeed.

Another proposal, less sweeping in its implications, would effect much the same sort of change as respects administration. This proposal is that a chief administrator be chosen by the legislature who would have full power of direction over administration and who would be directly responsible to the legislature.<sup>1</sup> The elected governor would remain as chief executive, but he would be bereft of his control over administration. The idea has been worked out in connection with the city-manager form of government, which does not involve the elimination of the elected mayor as chief executive. Nevertheless the position of mayor in these cities is somewhat anomalous and affords a hint of difficulties that might arise if the state governor were to be relegated to a similar innocuous station.

There are two fundamental reasons why certain students of government advocate these changes. One is that popular election is not a good way to get a competent administrator. As administration comes to be more and more important, it becomes ever more desirable

<sup>1</sup> "That the governor be elected by the legislature from among its members, or by the electorate directly, to serve as the presiding officer of the legislature and as the official head of the state government, but not as an administrative officer.

"That a state administrator be chosen by the legislature on the basis of his qualifications to administer the affairs of the state, and that he be in effect the general manager of the state government, subject to the plans and policies determined by the legislature.

"That the state administrator be appointed without term, subject to removal by the legislature in case his conduct of the state's business should prove unsatisfactory.

"That, as an alternative, to the foregoing recommendations, an assistant governor be appointed as a permanent and continuing technical officer, to be responsible to the governor for administration of the affairs of the state." Griffenhagen and Associates, *Report Made to the Special Legislative Committee [of the State of Wyoming] on Organization and Revenue* (Cheyenne; Wyoming Labor Journal, 1933), II, 222, 223.

that the chief administrator be chosen in some better way than by election. There is much force to this argument. The other one is that the chief administrator ought to be fully responsible to the legislature, which means nothing less than that he should be literally removable by the legislature. But, however powerful these arguments may be, and however interesting they are to speculate upon, the practical student of American government will find it more expedient to direct his attention to ways and means of improving administration with the familiar elected governor at the head.

Although the popularly elected governor is likely to remain, it does not follow that changes in his term of office will not be effected. From the point of view of administration, anything less than four years is certainly not desirable. A great many states have two-year terms. This means that a very considerable portion of the governor's term of office is devoted to planning and working for re-election. This is bound to be very bad for administration. Furthermore, it makes it very difficult for a governor to get his administrative program—if he has any—under way and well started. He ought to have a program, and he ought to have a chance to get it established and operating without being drawn away into the turmoil of a campaign with all its distracting demands and evil influences upon administration. Ironically enough, in most of the states the newly elected governor has by far his most difficult tasks on his hands when he first enters the office. Hardly does he get home from the inaugural ball, but he must prepare a budget message, familiarize himself with all the activities of the state, and be ready to assume leadership in getting his program through the legislature. This happens in states where the governor is elected in November and takes office a few weeks later, and where the legislators assemble shortly afterwards. In two or three months the legislature adjourns, not to meet again for two years, at which time another new governor will be upon the scene. Under those circumstances governors have to face their greatest responsibilities the first few weeks of their terms, and often they merely coast along during the remainder of their two years of office. Four years is none too long a term for a governor, especially from the point of view of administration.

This point needs to be stressed, for the governor is something more than chief administrator. What might be good from the point of view of administration might not be so desirable from other points of view. The governor is inescapably the most important political officeholder. State politics revolve around that office. The candidate for governor, if he is not the actual leader of his party, is certain to

be an important figure in party politics. All this has a very important bearing on such matters as method of selection, length of term, reeligibility, removal, and degree of responsibility to the legislature. The governor plays a triple role as chief executive, chief administrator, and chief political officeholder. It is rather difficult to reconcile these roles, and that is why some students of government would like to reorganize state government drastically.

However, the purpose here is to examine the office from the point of view of administration. In this connection it should be pointed out that the governor derives most of his genuine administrative powers from the statutes and not from the constitution. Even his powers of appointment are derived almost wholly from the statutes. State constitutions do not bestow upon governors the sweeping power of appointment conferred upon the President by the federal constitution, to say nothing of the implied power of removal that goes with it. The governor appoints just those officers whom the legislature has declared he may appoint, and subject to the restrictions imposed by the legislature.

#### POWER TO APPOINT

Although the power of appointment is usually considered an executive function, it is clear that a governor is able to exercise a considerable measure of effective control over administration through this power of appointment. He who appoints another to office is certain to be able to exert at least some influence over the activities of that office. Just how much depends on many other considerations. With the prodigious development of administration, the governor's power of appointment has necessarily expanded greatly in recent years. It does not follow that his real power over administration has developed proportionately. Various expedients have been developed in order to prevent this.

One familiar device widely utilized to this end has been the requirement of senatorial approval of appointments. Usually a simple majority vote of the senate is required, but sometimes a two-thirds rule applies. In either event, the requirement operates as a very real curb upon the governor's appointing power and very greatly curtails the influence he might otherwise exert upon those whom he has put in office.<sup>2</sup>

<sup>2</sup> " . . . , it seems better to dispense altogether with the action of the senate in this matter, so as to place the responsibility for appointments squarely on the shoulders of the governor where it belongs, rather than to divide it between him and the senate. The governor may need advice before making appointments, and it may be suggested

It might be supposed that the requirement of senatorial approval, as it applies to the President, would have the same paralyzing effect upon his influence over administration. But this is not so, chiefly for two reasons. The first one is that he still holds the power to remove those whom he appoints, and that is a far more effective instrument of control even than the power of appointment. The other is that in Washington the ramifications of the practice known as senatorial courtesy have operated greatly to strengthen the hand of the President in some very important directions, while at the same time it has curtailed his power in others. On the whole, the President wins, so far as control over administration is concerned. Senatorial courtesy operates to compel the President to make a large number of relatively unimportant appointments in accordance with the wishes of the senators from the state wherein the appointee is to function, provided the senators are of the President's party. Senators co-operate in order to prevent the necessary senatorial approval if the President does not respect the wishes of the senators representing the state involved.

Thus the President has virtually been deprived of real power of appointment as respects a large number of officeholders. But he gains, nevertheless, for custom also dictates that the relatively few, but most important, positions, chiefly the cabinet posts, shall be filled as the President desires, and senatorial approval is very rarely withheld as respects them. And obviously these positions are by far the most important when it comes to exercising control over administration. This turn of events has been most interesting. In effect it means that instead of the President having power to appoint with the consent of the senate, he appoints the most important officers without the consent of the senate and the senators themselves appoint the less important officers. The constitutional requirement is respected in form, not in reality. Nevertheless the constitutional requirement is there and would certainly operate to prevent serious abuse. But it has not operated very often to impair the President's control over administration. Most observers are convinced that this is a good thing.

Nothing comparable to this custom has developed in the states. Senatorial approval operates as a very effective potential restraint

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that it would be sufficient to require the governor to secure the advice of the senate but not to follow it. . . . The only legal check that seems needful in the matter is to require that the governor issue a public statement indicating his reasons for making the appointment, which should include a description of the appointee's qualifications for the position. This would tend to prevent wholly unsuitable appointments and would at the same time concentrate responsibility for the appointment." Mathews, "State Administrative Reorganization," *op. cit.*, p. 395.

on the governor with respect to every appointment to which it applies; and quite generally state senators are most jealous of their prerogative with respect to the most important offices. Thus governors face a very formidable hurdle when it comes to appointing the key men who are to serve with them in directing administration. How serious an impediment this proves to be depends upon the political situation, the party complexion of the state senate, the personality of the governor, and numerous other imponderable factors. But there is no doubt at all that the requirement of senatorial approval operates as a very important obstacle to the governor's control of administration.

To many people this would seem to be no valid argument for doing away with senatorial approval. This check is thought to prevent him from appointing political henchmen and personal friends who have no special fitness for the positions and who look upon the appointment as a sort of gratuity, or else look forward to using the position for ulterior political purposes. These are real dangers, of course. It is idle to maintain that such abuses have not occurred, or are not likely to occur in the future. Governors are indeed tempted to pay political debts and to reward friends with appointments to office. But there is very grave reason to doubt whether the device of senatorial approval really curbs the practice. Indeed it may work quite the other way. There is just as much reason to suspect senators of wanting to pay political debts as to suspect governors. Senators are conscious of no personal responsibility for good administration and are quite capable of forcing a governor to make appointments against his better judgment. A good governor, entering office with every intention of filling the more important positions with excellent people, may find himself effectively thwarted by politically minded senators. It is not argued that this happens frequently. The point is, that senators are as likely to be influenced by political considerations as is the governor. And, on the whole, since the governor is the one who is responsible, there is more reason why he should resist temptation than why the senators should resist it. In fact there is no valid evidence that governors would make worse appointments to office were it not for senatorial approval, and there is much reason to believe that they would make better ones.

The device of senatorial approval very definitely tends to lessen the governor's sense of responsibility. He cannot escape responsibility altogether, but so long as he must get approval from the senators he is inevitably compelled to bargain with them about his appoint-

ments and he cannot feel that all his appointments are really his own. Some of them are almost sure to be very unwelcome to him. At worst, a governor can deliberately play politics with senators and trade appointments with them for ulterior purposes. There can be no doubt that one reason why senators want the power of approval is that they want to be in position to bargain with the governor about appointments. Furthermore, it is by no means impossible for a governor deliberately to shirk responsibility by making certain appointments which he knows full well will be turned down by the senate. His apparent second choice may, in truth, be his real choice, but the little play has made it possible for him thereafter to maintain that the senate did not allow him to make the appointment which he really wished to make. Such practices are rather subtle. It is quite impossible to say to what extent they are engaged in, but there would seem to be no doubt that they are potentially just as bad and just as likely to occur as the abuses which a governor may practice when he has a free hand.

There is still another reason why many people favor the device of senatorial approval. It is because they fear too great a concentration of power and influence in the hands of one man, even though he be a man of fine character and beyond reproach. This feeling is widespread and deeply rooted. With many people it is quite genuine and sincere. Nevertheless this attitude is a very formidable obstacle to good administration. It is tantamount to saying that the chief administrator should not have too much authority or influence over those who are to assist in administration. Indeed, it is almost equivalent to saying that there should not be a chief administrator. It is to deny that administration is one great unified task in which all the workers are interdependent upon one another and in which all should pull together in one direction. Or else it is to hold that the dangers of concentrated power are so great that sound principles of administration must be sacrificed in order to guard against them. These views are a survival from Revolutionary times. They are not valid. The device of senatorial approval of appointments to administrative positions should be used very sparingly and ought to be largely abandoned. It is a definite impediment to good administration. However there is not the same objection to senatorial approval of appointments to positions on the various boards.

Another device which impairs the governor's influence over appointees to office is the practice of allowing certain appointed officers to hold office for periods longer than the governor's own term. This



is true in the case of members of numerous boards and commissions. Members of boards of public welfare, utility commissions, boards of education, and other such plural agencies are often appointed for six or even nine years. One third of the members go out of office every two years, and the governor appoints to fill the vacancies. If his own term is for two years only, as frequently is the case, he cannot control the membership of the board unless he himself has been re-elected for a second or a third term.

This may not be an unmixed evil. There is much to be said in favor of these so-called overlapping boards in connection with some of the administrative services. Where boards exercise true board functions and not direct administrative functions there is not so much reason for the governor to have authoritative control over them. By true board functions is meant the functions that can be performed by a group meeting occasionally to determine policies within a given administrative area, to receive the reports of those who are directly concerned with actual administration, and to exercise a certain measure of supervisory control. In some areas of administration, such boards can serve a very useful purpose. They make for stability and continuity of policy. They serve to check radical changes and undue experimentation. If it is desirable that such purposes be served, and in some cases it is desirable, they are served the better by overlapping boards that are not too subservient to the governor.

In the other areas, where plural agencies are exercising direct administrative functions, there is just as much reason for the governor to have control or influence over them as there is for him to control single officers. Very rarely is this distinction recognized, however. Too often boards and commissions of all kinds are of the overlapping type. This fact tends to impair the power of the governor over administration, cultivates a sense of independence and irresponsibility, and thus definitely obstructs good administration. Furthermore, it may be added that plural agencies are more likely to develop a sense of irresponsibility than are single officers. Responsibility is bound to be diffused in a plural agency. No one member feels himself to be personally accountable for what is or is not done. Cases of refusal to co-operate, aggressive independence, and indifference to the need for harmony and mutual helpfulness are particularly offensive when boards or commissions exercise administrative functions. No one member admits personal responsibility. Thus it may be concluded that overlapping plural agencies have only a very limited usefulness in direct administration. They should be used sparingly.

## POWER TO REMOVE

The power of removal is closely related to the power of appointment. So closely related are these two powers that the Supreme Court of the United States has held that so far as the President is concerned the one power implies the other. In other words it has been held that when the President has power to appoint, it may be assumed that he also has power to remove. This has been very significant, for the constitution does not clearly grant the power to remove. A considerable number of eminent constitutional lawyers have believed that a sounder view is that it may be assumed that an appointed official may be removed only by means of the process by which he was appointed. Thus, if the President appoints an official wholly upon his own authority, he may remove him singlehanded; but if the appointment has been made with the consent of the senate, he can be removed only with the consent of the senate. It is, no doubt, very fortunate indeed that this view, reasonable as it may seem to be, did not prevail. The effects upon administration would have been very unfortunate, to say nothing of other evils that would have developed.

However, state courts did not follow in the path of the Supreme Court of the United States. They did not even accept the modified interpretation of implied power, namely, that the governor can remove appointees by means of the process by which they were appointed. On the other hand, the doctrine is firmly established in the states that the governor can remove an appointee only if the law explicitly declares that he can do so, or if the officer is not appointed for a fixed term. Very rarely does the law do this. The result is that the governor's power of removal is very closely circumscribed.

This is, perhaps, not so surprising as it might seem at first sight. The vast power of the President in this connection had a somewhat adventitious origin. It is not wholly clear just what the framers of the federal constitution really intended. Certain it is that they wrote a plain and sweeping clause granting power of appointment. The Supreme Court gave this clause a broad interpretation along with the broad interpretations accorded to the grants of power to Congress. This was logical enough, and Congress did not seriously challenge the broad interpretation until the practice had been firmly established. On the other hand, if there had been no such sweeping power of appointment provided for in the constitution, and if it had been left to Congress to decide with respect to each new appointive office that was created whether or not the President could remove single-

handed, it is very doubtful indeed if Congress would have allowed him to do it.

It is easy to understand why early state constitutions did not contain the grant of board power of appointment found in the federal constitution. The effect of this was that in setting up appointive offices, the state legislatures could give or withhold the power of removal. They did the latter, as Congress probably would have done under similar circumstances. State courts were quick to take this cue and they have resolutely held that governors have no implied power of removal over those whom they appoint.

This attitude on the part of state courts has had the effect of greatly curtailing the power and influence of governors in the field of administration. The effect has been aggravated by the tendency of legislatures to continue to withhold that power. At this late date there is no reason whatever to expect state courts to reverse themselves and to hold that governors do have implied power to remove appointees. This means that if governors are to acquire such power, it must be done by means of constitutional change or by a change of attitude on the part of legislatures. There are some indications that legislatures are changing their attitude. Some new and very important officers, such as comptroller or budget director, have been established in recent years, and governors have been given power to appoint and to remove them at will. This is a sign that legislatures are coming to recognize sound principles of administration. Legislatures find it easier to do this with respect to wholly new offices than to alter the status of old offices. Several states in recent years have adopted comprehensive schemes of reorganization and in connection with these the governor usually acquires a considerable measure of removal power, at least over some of the chief administrative officers.

It should not be assumed that governors quite generally have no removal power whatever. They do have some, but it is likely to be so hedged about and restricted as to serve no useful purpose in improving administration. Very often the governor is authorized to suspend or even to remove an appointed officer for certain specified reasons. These reasons may include the giving or accepting of bribes, habitual drunkenness, neglect of duty, commission of crime, or other offenses involving moral turpitude. The terms "nonfeasance," "malfeasance," and "misfeasance" sometimes appear, implying failure to perform duty, some wrongdoing in connection with it, or gross incompetence. Power to remove under these circumstances is all very well so far as it goes, but it does not involve much real power. The person removed for any of these specified reasons may go into court,

and there the governor is obliged to prove that the officer is truly guilty as charged. Only in the grosser cases of misconduct is it possible to do this. Not only is it very humiliating to the governor if he cannot make his charges stand up, but if he fails, and the officer is thus allowed to return to his post, the effects upon administration are little short of tragic. The bitterest kind of enmity has been added to the other impediments to good administration. The ranks of the administration may be split into warring camps and the governor himself has definitely lost much of whatever prestige and influence he may formerly have possessed. Therefore it is no wonder that governors very rarely invoke this dubious power, and do so only in the most notorious and flagrant cases. It is not just to condemn governors for not utilizing this power more frequently than they do.

Sometimes this power is vested not in the governor alone, but also in a council or board, perhaps composed of chief elected officers sitting *ex officio*. This device does not improve the situation greatly. It does take the onus off the governor, but incidentally it impairs his responsibility. Formal hearings comparable to judicial proceedings may be held. The case gets great publicity. Animosities are engendered, recriminations are indulged in, partisanship is fanned to white heat, and deep and irreparable enmities are likely to be developed in the ranks of the administration, to say nothing of the political repercussions that may follow. The unedifying spectacles of these removal proceedings are enough to convince one that such a process has no place in sound administrative procedure.

It is a great mistake to assume that a principal administrative officer should not be subject to removal unless he has committed some crime or is guilty of gross misconduct. This view should not be held with respect even to such very important administrative officers as the members of the President's cabinet. Indeed, it seems particularly appropriate that they should retire whenever the President finds them no longer useful to him. Questions of misconduct may not be involved at all. Retirement may even occur when the President and the cabinet member hold each other in high esteem. Ambassadors may be retired under similar circumstances. A chief administrator ought to be able to secure the retirement of the principal officers who hold positions that are absolutely vital to the success of his administration without having to prove that they are criminals or grossly incompetent.

Inability to do this frequently compels state governors to submit to a great deal of non-co-operation, indolence, inefficiency, wastefulness, and all the petty troubles that follow in their train. The general

effect is paralyzing and altogether bad for administration. It need not be feared that principal officers who may be subject to the arbitrary dismissal of the governor are in a precarious position and in constant danger of losing their posts. Very, very rarely does the President secure the retirement of a cabinet officer, or indeed any of the other high officials. But the significant thing is that he could do so if adequate reason were to arise. It is no credit to a chief administrator to remove his own appointees. Indeed, he cannot escape at least some slight stigma whenever he does so. He has every incentive to keep them with him. So strong is this consideration that a chief executive is likely to be unduly reluctant to exercise his power when he obviously should. The same considerations would weigh with governors. They should be allowed to remove their principal appointees to administrative positions.

Emphasis has been placed upon the word "principal." It is intended to make a distinction between those who hold the chief positions in an administrative structure and those who are subordinate appointees, and who have acquired their positions in the civil service through some sort of merit system. It is obvious that they should be protected against arbitrary dismissal by ordered processes established in connection with sound personnel administration.

#### POWER TO SUPERVISE

It is clear from what has been said here that governors have but little authority or control over administration through their power of appointment and removal. But they have certain other powers which might afford them some measure of control. Frequently they are given power of supervision and power to call for reports from the principal administrative officers. It might be supposed that these powers, when clearly granted in the constitution, would afford the governor a very broad measure of authoritative control over those upon whom the powers could be exercised. But such is not the case. The constitution may say that the governor shall have "general supervision over" the various departments of administration, but standing by itself the phrase is almost meaningless. Indeed there are few words in the terminology of political science that are used in such a fatuous manner as the term "supervision." It would almost seem that constitutional conventions and legislative bodies, when they are unwilling to grant specific and real powers, but vaguely feel as though they ought to do so in the interests of good government, compromise with themselves by granting power of general super-

vision and let it go at that. County governing boards are given power of general supervision over all county activities. Mayors are given power of general supervision. Administrative officers and various boards and commissions are given power in the same terms. But unless specific authority to do particular things accompanies the broad grant of supervisory power, the recipient of the grant is likely to find it quite empty.

The reason for this is clear enough. Power to supervise does truly have some powerful implications. As interpreted in the business world and in private organizations generally, it may well imply a right to make thoroughgoing investigations, to give orders, to forbid certain practices, to require that certain things be done, and to exercise disciplinary authority in order that instructions be obeyed. One who had power to supervise a staff of clerical workers presumably would have power to do these things, and thus the power to supervise would have real meaning. It would not need to include the ultimate and drastic power of dismissal, but it would be genuine power nevertheless. Power of dismissal is so great that a grant of power to supervise becomes superfluous in connection with it. But in the absence of that ultimate power it is very difficult to say precisely what measure of authority is actually intended. Each specific right claimed under a broad grant of power to supervise may be vigorously challenged. Is the right to make an exhaustive examination of books and records implied? Is the right to require different methods of carrying on the activities of an office implied? Is the right to forbid certain practices implied? The answer may be yes or no. If the interpretation be liberal, it may be anticipated that ever greater powers will be claimed, and it becomes necessary to draw a line somewhere unless it is really intended that the power to supervise shall mean full authoritative control.

As a matter of fact, rarely is such complete authority really intended; therefore it has seemed reasonable to the courts to construe the power strictly and to hold that it does not imply these numerous specific powers. If the courts had adopted a liberal view, they would have been in the awkward position of having to define precisely just what the power to supervise might mean in each and every case where an attempt was made to exercise it. No wonder the courts have refused to undertake such a delicate task. The net result is that an officer who merely has the right to exercise general supervision is in no position to assume that he can do any particular thing in connection with that right. Thus he finds it an empty power granted in rather pompous terms. An exception appears when a right to exercise

general supervision is granted along with some specifically enumerated powers. Then it may reasonably be inferred that the general grant of supervisory power creates a presumption in favor of the officer seeking to make some of his specific powers effective. In this connection it is not empty at all, but instead it definitely tends to justify a liberal construction of the specific powers granted.

Thus a governor who would undertake to go into the attorney general's office or the treasurer's office and, under a constitutional grant of power to supervise, give orders with respect to the conduct of the work being done there, would find himself very effectively challenged and invited to get back into his own office and mind his own business. The result is that he makes no vain attempts to make this power effective, even with respect to officers whom he himself has appointed. Hence it may be said that quite generally governors do not exercise even a modicum of supervisory control over the principal administrative activities of the state. Exceptions appear in those rare cases where the statutes clearly grant power to remove or to exercise specific powers of control.

#### POWER TO CALL FOR REPORTS

The right to call for reports is almost as empty as the right to exercise general supervision. One is not disposed to take very seriously a right to call for a report when he is in no position to do anything about the matter if the report is unsatisfactory. On the other hand, a subordinate official is unlikely to take very seriously the preparation of a report when he realizes that no effective action can be taken against him on the basis of it. The result is that reports rendered under such circumstances tend to become perfunctory, unilluminating, and largely useless. It may be said, perhaps, that no report is ever wholly useless. However inadequate it may be, it is a tangible record that gives some information. Oftentimes an officer betrays his own incompetence or inefficiency through careless reports, even though no immediate corrective action may be taken on the basis of them. Thus even careless and inadequate reports may serve an ultimate purpose. However, a report ought to provide comprehensive, accurate, and useful information to the one who has a right to call for it, and it should provide a trustworthy basis for constructive criticism and demands for improvement. The reports which governors may call for under the conditions that prevail in most states cannot possibly serve any such purpose. For the most part, they are received, are placed on file, and gather dust forevermore. Thus the

right to call for reports, in and of itself, affords no opportunity to exercise authoritative control over administration. It is in reality an incidental power, useful chiefly when it accompanies other, more direct powers. It is just another of those powers that seem to be important but in reality are not so.

So far it would appear that governors are rather helpless, that they hold empty honors and prerogatives that do not amount to much in the realm of administration. It is true that progress in the direction of giving the governor direct and effective control over administration has been very slow. Nevertheless, by means of indirect approach, the hand of the governor has in fact been very greatly strengthened in contemporary times. The development of these indirect approaches has been most interesting to the student of political science, and perhaps illustrates a typical American solution of a political problem. The traditional and formal safeguards against executive tyranny have largely been retained, but new devices have been evolved by means of which the paralyzing effects of these safeguards have been at least partially nullified. The confident student of administration is impatient of these slow methods of indirection, but they seem to suit the American temperament better than the methods of bold direct reform. Even so there are plenty of indications that the latter methods will be resorted to even more in the future than they have been in the past.

#### POWER TO SUBMIT BUDGET

The power to prepare and submit a budget has very greatly strengthened the hand of the governor in the matter of exercising an indirect control over administration. An able governor, with sound budget machinery at his command, can be a very powerful influence in the entire field of administration, even though he lacks the direct power that he ought to have. Even badly designed budgetary machinery tends to strengthen him. Any executive budget system affords the executive an opportunity to review the requests of the various spending agencies and to make recommendations to the legislature respecting them. A shrewd and competent governor can utilize this opportunity with telling effect. All the spending departments submit their requests for new appropriations to him. He brings them all together in a budget document and can thus criticize and comment upon them to any extent he may wish. What an opportunity, if he has the skill to utilize it! Early in the legislative session he presents his budget. With the attention of the legislature, the press, and the entire state



focused squarely upon him, he can criticize, praise, argue, defend, and vigorously recommend with convincing logic that certain administrative services be strictly curtailed or even abandoned, that others be expanded and given more money to spend, or that far-reaching changes be made, all in the interests of economy and efficiency, while the whole array of administrative officers, whom he cannot control directly, sit around and listen in silent anxiety.

Many governors have not risen to this opportunity. Many of them are so conscious of political considerations and the many impediments to their exercise of direct administrative power that they have let these opportunities for leadership escape. Others have definitely lacked vision or ability to use this opportunity. Sometimes the budget process is so ill-conceived, and so hedged about with nullifying restrictions, that the governor feels that all efforts to use it would be futile and that it might react to his own disadvantage. Nevertheless the power to present a budget does afford an opportunity to put great pressure upon administrative departments in a way they are not slow to appreciate. Even though a governor's budget proposals are largely ignored by the legislature, by presenting them he has had an opportunity greatly to enhance his prestige and influence, and thus his power over administration. Although an administrative department may ultimately obtain the appropriation it has asked for, in spite of the governor's adverse recommendation, every officer and employee in the department experiences a feeling of dismay and some uncertainty until the appropriation has actually been made. This cannot but tend to cultivate a wholesome respect for the wishes of the governor, and thus to strengthen his hand in the field of administration. Under some budget systems the department heads, and others too, may have access to legislative committees and thus defeat the governor in the matter of appropriations for their departments, but no other officer in the entire structure of the government has the dramatic opportunity which he enjoys when presenting his budget to the legislature.

Of course the extent to which this opportunity may be used effectively depends upon a great many factors which it is not in order to discuss at this point.<sup>3</sup> The governor's own personality and personal popularity are not the least of them. The detailed steps in the budget process—which vary greatly from state to state—all have their bearing on this matter. But it has come to pass in the last two decades that a large number of the states have introduced the executive budget in one form or another, and there can be no doubt whatever that the

<sup>3</sup> This subject is discussed at length in Chapter VI.

result has been greatly to strengthen the governor in the field of administration. The extent to which this is true depends largely upon the nature of the budget system that has been put in operation.

#### POWER TO VETO

Another device that has strengthened the governor's hand even more than this has been the item veto power. This too is an indirect control device. The suspensive veto power has been enjoyed by nearly all state governors since Revolutionary days, and is firmly imbedded in the American tradition. However, as applied to omnibus appropriation bills, it has distinct limitations as an instrument of control. It has been the custom for legislatures to enact comprehensive appropriation measures that provide for many administrative services. There may be many items in the bill that are very distasteful to the governor, but it will also contain some very important appropriations that he does favor and which may be absolutely vital to the continued functioning of the government. These items he cannot afford to veto. But he must approve the bill as a whole or veto it as a whole—the good with the bad. The effect of this has been almost to nullify the governor's veto power as respects appropriation bills. Indeed, there is reason to believe that legislatures deliberately include in appropriation measures certain items which they know full well the governor cannot afford to veto, for the very purpose of rendering him powerless.

One way to remedy this situation, if it is desired to make the governor's veto power just as effective in connection with appropriation measures as it is with respect to other bills, is to split appropriations up into a number of separate bills and thus to give him his opportunity to veto those measures which he does not approve without jeopardizing the services that must be maintained. But this is a solution which only the legislature itself can provide and there is no likelihood that it will be used to any great extent. Another solution which can be easily provided for in the constitution is the item veto power. The governor then has an opportunity to veto those items in an appropriation bill which he does not approve, and to allow the rest of the bill to become law. The items which he vetoes can be restored by the legislature in the same way that other vetoed bills can be passed over his head; but this is very hard to do. The power to veto items is enjoyed by the governors of more than three fourths of the states.<sup>4</sup>

<sup>4</sup> "In thirty-nine of the states, however, the governor is empowered to veto specific items of appropriation bills. He can thus eliminate excessive, wasteful appropriations

Indeed, so powerful a weapon is this item veto that many who favored it a few years ago have come to doubt the wisdom of letting the governor have it. By means of this device he can threaten the very existence of certain administrative services, particularly the small ones, which may be important but are not really essential. With this weapon at his disposal, the governor can sit like a sniper with a rifle in his hands and destroy those services which he disapproves or force drastic curtailment of their activities. It may become extremely difficult to muster the necessary majority in the legislature to put the item back again, especially if the service involved is relatively obscure and is not essential. Clearly, the threat of item veto can be used with devastating effect upon administrative officers who may well be in fear that their departments will be hopelessly crippled or destroyed. In the hands of a vindictive governor or of one who is actuated by ulterior political motives, the item veto could become intolerable. This would be particularly true in those few states where the governor can reduce an item without vetoing it outright. It is doubtful whether or not the governor should have such power. The opportunities for abuse which it affords probably outweigh its advantages. There are other ways of giving the governor power of control over administration that are direct and above board and far less susceptible of abuse. It would be much better to make use of them than to fall back upon this device, powerful as it might be in strengthening the hand of the governor in the field of administration.

#### POWER OF LEADERSHIP

Although most state governors are seriously hampered and restricted in the field of administration, it should not be assumed that the office is not an important and powerful one. Quite the contrary. Indeed, the office has been growing in importance and strength very

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without jeopardizing the safety of appropriations that are essential to the proper conduct of state affairs. Lacking this power, many a governor would face the unpleasant alternative of vetoing entire appropriation bills because of certain objectionable features, thus incurring the enmity of the legislative leaders and probably necessitating an extra session of the legislature, or of accepting the good with the bad and signing bills that did not have his wholehearted approval. In a few states the governor not only strikes out unwelcome appropriation items but even reduces items that he deems excessive. The amount of the reduction rests entirely in his discretion." Macdonald, *American State Government and Administration*, p. 263.

"What the executive really wants to do in many instances is to reduce an item rather than to veto it. This device was created largely to permit the governor to prevent improper or unconstitutional items in appropriation bills, but legislative habits led to demands that he use the item veto to keep the state's expenditures within income." Arthur W. Bromage, *State Government and Administration in the United States* (New York: Harper & Brothers, 1936), p. 189.

markedly throughout the last half century. However it is most interesting to observe in this connection that power has been developing in the realm of public leadership and legislation, although not so much in the field of executive and administrative functions. There is small doubt that the governor's power will follow into these fields, but the enhanced prestige of his office has come largely through the tendency of candidates for that office to crystallize and lead public opinion and to formulate legislative programs.

This tendency is not entirely in harmony with the American tradition, but that need not be looked upon as a formidable argument against it. The classic ideal of a tripartite division of governmental powers is being deeply undermined. Presidents of the United States have been leading the way and many governors have followed in their footsteps. The old idea was that the chief executive should have very little to do with determining legislative policy. His prime duty was to sit in his office and wait until the legislature enacted a measure, then go out and execute it. The veto power was looked upon chiefly as a device for protecting himself against efforts of the legislature to encroach upon his own domain. There is grim irony in this. Rarely does the President or a governor need to invoke the veto power for this purpose. Rather, he very frequently uses it as a powerful instrument for achieving his own ends in the field of legislation. What a curious turn of events! An instrument intended for self-defense is used for purposes of vigorous attack. With it the chief executive has been able to beat down the intended barrier between executive and legislative departments and to invade the latter with telling force. Presidents have made dramatic use of the veto power to enforce their own ideas of legislation upon Congress. Governors can do the same thing with respect to state legislatures. At times it has almost seemed that the chief executive has become chief legislator. Woodrow Wilson boldly assumed this role as governor of New Jersey and as President. What is more, he defended the practice on theoretical and practical grounds with convincing logic. The American system of government has provided no satisfactory agency of legislative leadership. After more than one hundred years of experience the executive has begun to assume that function. This practice may come to be firmly embedded as an accepted part of our system of government. Certainly the public has seemed to respond favorably.

This significant change in the role of chief executive is clearly seen in campaign practices. It has come to pass that candidates for chief executive, either President or governor, go to great pains to outline policies and legislative programs which they undertake to press upon

the legislature. The public listens with much interest to an explanation and defense of legislative measures which the candidate for chief executive will support. Candidates for the legislature are identified as supporting or opposing the legislative program which the candidate for the office of chief executive advocates. And there can be little doubt that executives are elected or defeated on the basis of the stand they have taken upon legislative issues. A candidate for chief executive is not likely to be measured by his ability and willingness to enforce the law, but upon what he wants the law to be. Here lies a very significant change in emphasis, a change that has come about swiftly and quietly and almost unappreciated by the public at large. It has probably been a change for the good, but it is not without some dangers. The danger lies in the fact that our system of government does not make the chief executive responsible to the legislators who enact the program which he is frequently able to impose upon them.

The connection between this tendency to leadership in the field of legislation and influence in the field of administration is clear. Executives who campaign for legislative programs and subsequently guide them through the legislature are not going to abandon these programs once they are enacted into law. They are bound to exert every direct or indirect influence at their command to control the administration of these programs. And public opinion is going to demand that they have the opportunity. The public is not going to elect an executive on the basis of his legislative program and then be content to see him stand helpless to execute the policies he has advocated.

The significance of this was made dramatically clear during the first years of President Franklin D. Roosevelt's administration. Under terrific pressure to do so, Congress all but abdicated its power to the executive. In no one of the states has the pressure gone quite so far, but it is there nevertheless and is gradually having its effect. This growing power in the field of legislation is sure to result in increased power in the field of administration. There are many signs of it.

By means of special messages and by calling special sessions of the legislature the chief executive can still further exert his influence. During sessions of the legislature the executive can and will be expected to urge upon the assembly the adoption or defeat of specific measures. Not only this, but he will be expected to exert all the subtle influences that he can behind the scenes to this same end. And these are many and powerful, deriving their force largely from political considerations. A skillful executive can utilize these opportunities with great effect, particularly if he has public opinion well consolidated behind him. He may in literal truth become the most powerful of

legislators, actually preparing legislative measures himself and forcing them through. This practice has reached its highest point upon the national stage and it also has enormous possibilities in every one of the states. All that is needed is bold aggressive leadership on the part of able men.

A considerable number of states have given the governor power not only to call special sessions of the legislature but also to dictate the subjects that shall be dealt with at these sessions.<sup>5</sup> Here indeed is a splendid opportunity. This grant of power has grown out of the fact that sometimes governors have called legislatures into special session to deal with some particular subject, only to see them ignore this subject and deal with something else. But if the legislature must of necessity deal with the matter for which the special session was called, or else adjourn and go home, it is under very heavy pressure to do what it was called to do. To be sure it may flout the governor and refuse to do what he desires, but it is squarely in the limelight, with the governor standing over it, as it were, and it cannot possibly draw a red herring across the trail and go off upon a tangent, thus distracting public attention to other matters and so circumventing the governor. Even the President does not have this great power to dictate the subjects to be dealt with in a special session of Congress. It is interesting to speculate upon the influence he could exert if he did have it. Certainly it affords great possibilities which are likely to be exploited in the years to come by those governors who do possess it.

Thus, although it might seem that in many ways American state governors are seriously restricted in the realm of administration, they are by no means powerless; and the tendency of the times would seem to indicate a very great increase of power, both direct and indirect.

<sup>5</sup> "In more than half of the states, the legislature, when convened in special session, may consider only the subjects which have been included in the governor's call. Hence, by specifying certain topics in his summons, the governor may practically compel the legislature to consider these matters and to put itself more or less fully on record concerning them." F. A. Ogg and O. P. Ray, *Introduction to American Government* (5th ed.; New York: D. Appleton-Century Company, Inc., 1935), p. 716.

### CHAPTER III

## THE SECRETARY OF STATE

THE office of secretary of state is provided for in all states. It may be considered the ranking executive office next to that of the governor. However, this prestige, it may be supposed, is based rather upon the federal analogy than upon the real importance of the office. During the period immediately following the Declaration of Independence and the time when the Articles of Confederation went into operation, the thirteen Colonies enjoyed a few short years of true independent statehood. A genuinely independent sovereign state must have some office through which contacts with the rest of the world may be maintained, and such an office is a very important one. Whoever holds it occupies a very high position in his own government circles and commands some measure of prestige abroad. He is usually known as secretary for foreign affairs and heads a large and influential department of administration. And as head of this department the secretary for foreign affairs is very close to the chief executive. Second only to him, he is likely to be considered the ranking member of the administration.

### BACKGROUND OF THE OFFICE

Had the thirteen states continued an independent existence, the secretaries of state would no doubt have evolved into secretaries of foreign affairs, whether or not they were known by that exact title. Soon after the federal constitution was put into force Congress created a department of foreign relations, the name of which was soon changed to Department of State. It was intended that this should be the ranking department, and that the secretary of state should be in effect the secretary for foreign affairs, very close to the President, and the ranking member of the administration. He has retained that eminent position ever since, the importance of the post being emphasized by the fact that in case both President and Vice-president are incapacitated, it is he who shall immediately assume the duties of President. This has been provided for by act of Congress.

Here, then, is the background of the office of secretary of state as it appears in the present-day commonwealths, and it accounts for the

prestige which the office still enjoys. Nevertheless, due to the fact that only the thirteen original states ever enjoyed even theoretical independence and sovereignty—and they for a very short time—the office of secretary of state never did acquire the true importance which the title implies. If the United States had remained a confederacy, no doubt the office would have assumed more importance than it did; but with the establishment of the federal constitution an office of secretary for foreign affairs in each of the states became an anomaly. The states could have no official relations with foreign governments on their own responsibility and if the office of secretary of state was to acquire any real importance it had to be in connection with domestic administration. But in the field of domestic affairs it has been far outstripped by numerous other offices. The attorney general, the auditor, even the superintendent of public instruction are likely to be more influential, powerful, and important than the secretary of state despite his impressive background. Indeed, so far has the office declined that eminent authorities in the field of public administration advise its complete abolition, contemplating a distribution of its functions among other departments.

#### EXTERNAL RELATIONS

The office has not been charged with the same functions in every one of the states. It is still an elective office in thirty-eight of them.<sup>1</sup> In the other ten the office is appointive. And this office is still the official channel for communication with the outside world—that is, with the United States government and with the other states. But this function has always been of negligible importance and is steadily becoming less important. Other departments of state administration have steadily been establishing direct, intimate, and very important relations with various departments of the federal government. Especially is this true in the important fields of public works, education, public health and charity, and agriculture. The federal and state departments in these areas establish direct contacts instead of working through the respective departments of state.

State governors have established direct and intimate contacts personally, themselves, with officials of the federal government, thus completely ignoring their own secretaries of state. By contrast, the President of the United States communicates with other countries

<sup>1</sup> The secretary of state is appointed by the governor, with senate approval, in seven states: Delaware, Maryland, New Jersey, New York, Pennsylvania, Texas, and Virginia; chosen by the legislature in three states: Maine, New Hampshire, and Tennessee; and popularly elected in the other thirty-eight states.



through the Department of State. Furthermore it may be observed that no one of the federal departments of administration could establish direct relations with a foreign government without working through the federal Department of State. But the state departments of state do not enjoy anything like a comparable position of prestige and power. No doubt this is fortunate, though to have followed a contrary practice certainly would have been to have enhanced greatly the importance of the secretaries of state in the forty-eight commonwealths. The existing practice is indicative of the general tendency to centralize administrative power in Washington with respect to services in which both state and federal governments are concerned.

Because of this practice, the secretaries of state in the respective commonwealths now maintain only the most formal and perfunctory relations with the United States government. These relations involve the determination of no important policies or the making of any important decisions. The secretary of state sends to the proper federal authorities an official report stating who has been elected to Congress, and he officially reports the results of the so-called presidential election within his own state. When his state formally approves a proposed amendment to the federal constitution, he makes an official announcement of the fact. These acts constitute his most important relations with the federal government. His department may co-operate with the federal government in compiling census data, and there may be numerous other routine and relatively unimportant contacts with various departments at Washington. No useful purpose would be served by attempting to enumerate them.

Contacts among the various states within the union, so far as this office is concerned, are just as formal, perfunctory, and unimportant. States cannot make treaties nor can there be any foreign policies to develop. There has been some tendency among the states to enter into compacts or contractual agreements relative to such matters as irrigation, the control of interstate rivers, and forest conservation. This practice may develop further in connection with broader programs of conservation, the control of soil erosion, and similar projects.<sup>2</sup> But such agreements can be effected only with the consent of Congress, and what is more important, the respective departments of state have nothing to do with formulating the policies and making the decisions. Thus, among the states, the departments of state do not exercise functions comparable to the functions of departments of foreign affairs.

<sup>2</sup> For an excellent account of interstate co-operation see W. Brooke Graves, *Uniform State Action* (Chapel Hill: The University of North Carolina Press, 1934).

## USUAL DOMESTIC FUNCTIONS

Turning now to the strictly domestic functions of the department of state, it will be found that certain functions similar to those performed by the department at Washington are exercised at each of the state capitals. One reason why Congress very early decided to adopt the name Department of State instead of "department of foreign affairs" was that it seemed desirable to bestow upon this department numerous functions that had nothing to do with foreign relations. One of these functions was the custody of archives. The archives are public documents. It is very important that public documents be filed, catalogued, and kept in such a manner as to be readily available to those who have a right to have access to them. This duty devolves upon the Department of State. Acts of the legislature, proclamations of the governor, and decisions of the Supreme Court, are merely the most important among a great volume of public documents. It is no small task to keep all these documents in good shape and easily available. But to do so does not involve the determination of any important policy or the exercise of much discretion. The function is purely routine. Whoever has this responsibility should be alert to adopt new and better ways of filing documents. Enormous progress is being made in this connection. Up-to-date business concerns are quick to introduce the new and better methods. Those who keep the archives should be equally progressive in so far as appropriations for the purpose make it possible.

Very closely related to this function is that of authenticating public documents. Many public documents are printed, re-printed, and widely distributed. Somewhere there must be the authentic original copy. The secretary of state must identify the original, officially publish, proclaim, or promulgate it, as the case may be, attach the great seal to those documents which enjoy that dignity, and keep them in safety forever after.

The importance of all this should not be minimized, but these are not functions which need to be the direct responsibility of a chief officer of administration. There is not the slightest reason why the officer who is charged with this duty should be popularly elected. There are many reasons why he should not be. One of these is that whoever has charge of this routine work should enjoy relative permanence of tenure. The point scarcely needs to be labored. Whoever does the work should be eminently fitted by temperament and training to do it well, and should be allowed to keep on doing it, regardless of political changes, so long as he continues satisfactorily. Only

thus will he develop a genuine interest in his work, keep out of politics, and give his attention to the matter of painstaking thoroughness and efficiency.

A considerable number of subordinate clerks are required to do this work in the secretary of state's office, and their positions are very likely to be looked upon as political spoils so long as they hold their places at the mercy of an elected secretary of state. For he himself is deeply concerned with his own re-election and rewarding his supporters. Nothing could be worse for the morale of the office. The secretary of state being wholly independent of any superior authority may permit negligence and inefficiency to develop among his political appointees, and nothing can be done about it unless abuses reach such a point that the exceedingly clumsy devices for removal of elected officers need to be invoked. And conditions must be very bad indeed before this will be done.

Those who are responsible for the exercise of purely routine clerical functions ought to be subjected to what may be called administrative control rather than to the slow-moving, formidable processes of impeachment or prosecution in the courts. These latter devices are useful only in the rarest circumstances, chiefly when there has been evidence of criminality. Administrative control, on the other hand, implies constant supervision, power to give instructions, authority to demand improvement in small matters and to insist upon day-to-day efficiency and attention to duty. This is part of sound personnel administration. It is very difficult to achieve it through an elected officer who has below him a staff of political appointees.

Thus, the function of keeping the archives, together with all the various duties closely associated with it, ought to be assigned to some appropriate bureau or division manned by a permanent staff of trained workers who are subject to constant administrative control and supervision, and not be accountable to a popularly elected secretary of state.

In addition to serving as the official channel of communication with the outside world, and besides keeping the archives, the secretary of state usually has custody of the great seal, which is attached to certain of the more important public documents, thus identifying them as authentic original copies. He also promulgates or gives official announcement or publicity to public acts of the legislature or the chief executive. Of course these functions are important, and many years ago they were often accompanied with dignified and impressive ceremony. But today they are merely routine duties of little more real significance than the filing of a letter.

Upon further study of the secretary of state's office, a variety of

miscellaneous functions may be discovered. The duties already discussed are likely to be found in this office universally. But to go further is to find much variation. Indeed, there is no office that illustrates so vividly the chaotic development of state administration as that of the secretary of state. Again and again state legislatures have decided that some new function needed to be performed. They have been reluctant to set up a new agency of administration to take over the new function, it has not seemed to belong logically in any of the existing departments or offices, and so the function has been given over to the department of state to administer without regard to the fact that pretty soon a considerable number of wholly unrelated activities are being carried on within one department, thus making for bad integration and preventing the development of a sense of unity and common purpose that is very important in administration.<sup>3</sup>

<sup>3</sup> Some comments on the office of secretary of state by leading students of state government and administration are:

"Few duties are conferred upon the secretary of state by the constitution, and in most states his duties are such as are prescribed by law. He is the keeper of the state's public records and is frequently custodian of the state capitol. The important duties conferred upon him by statute usually relate to elections, corporations, and motor vehicles. The laws of many states make him the chief officer with respect to the state's supervision of elections. Certificates of incorporation are usually issued by the secretary of state; and he is in most cases charged with the administration of so-called 'blue sky' laws regulating the sale of securities. He is also frequently charged with the issuance of motor-vehicle licenses. The office of secretary of state has thus come to have important duties; although many of these duties have no relation to each other, and most of them involve little discretion." Walter F. Dodd, *State Government* (New York: D. Appleton-Century Company, Inc., 1922), p. 236.

"Some states, whenever faced with the necessity of undertaking new activities, assign most of the routine work connected with these activities to the secretary of state. As a result, this officer is now charged with a wide variety of duties, few of which bear any logical relationship to one another. He may be the custodian of certain state buildings and grounds, responsible for their maintenance and repair. He may be charged with the administration of the state's election system. He may be the official who issues charters to cities and to private corporations, and he may be responsible for the enforcement of laws controlling the sale of securities. He may supervise the issue of automobile licenses. Almost certainly his office will involve *ex officio* membership on numerous boards and commissions. In every state he performs some of these functions; in many states he performs them all." Macdonald, *American State Government and Administration*, p. 276.

"Other miscellaneous functions which the secretary of state is frequently called upon to perform include the issuance of certificates of incorporation to companies organized under state law, the admission of foreign corporations, and the issuance of licenses to owners and operators of motor vehicles. . . . It appears that some of his duties, such as those relating to corporations and motor vehicles and the collection of fees, should be transferred to other officers or departments of the state government to which they are more germane. If this were done, the office might be abolished entirely and the remaining duties transferred to some other officer, such as the attorney-general." Mathews, *Principles of American State Administration*, pp. 139, 140.

## AN EXAMPLE OF BAD INTEGRATION

Bad integration has already been referred to in connection with the practice of setting up independent administrative agencies to perform functions that are very closely related to each other and which ought to be exercised through one unified administrative agency. On the other hand, here is to be found bad integration of a contrary sort—the grouping in one department of unrelated administrative services that ought to be distributed among several. The concept of sound integration includes some negative as well as some positive implications. It is a mistake to scatter activities that ought to be grouped together, and it is also a mistake to consolidate a variety of functions that have little in common. Sound integration implies an array of administrative agencies, each of which is well unified, embracing all the services of intimately related character and none that are wholly extraneous.

It should be understood that this ideal of good integration is indeed largely an ideal. It is a very important idea to have in mind when it comes to organizing administrative agencies, but it is not an absolute rule or formula to be applied with mathematical precision. The principle is important but its application to a given situation depends upon a multitude of particular facts. For instance, in most situations it might seem that good integration would dictate that administration of the banking laws and of the insurance laws ought to be the duty of one department, yet there might well be considerations present in a particular state that would weigh against it. In most cases sound integration would dictate a consolidation of administrative agencies that had to deal with state parks, with conservation of natural resources, and with administration of the fish and game laws. Yet there would be states in which one or another of these services had been developed independently to such an extent, and had built up a morale and sense of unity and pride of achievement to such a degree, that to proceed with a program of consolidating these services would be actually to defeat the most important objectives to be sought through sound integration.

Just so, it might not be wise in every case to liquidate a well-organized, smoothly functioning department of state simply because certain of the functions being exercised through the department were not obviously related to each other. Functions often found in a department of state are: administration of elections, administration of automobile registration laws, compilation of various kinds of statistical data, taking

of a state census, registration of commissions issued by the governor, filing of bonds of public officials, publication of reports, filing of trademarks, sometimes a limited supervision of building and loan associations, the issuance of articles of incorporation, and a great variety of other miscellaneous functions.

Any department of state loaded with such a miscellaneous collection of duties probably ought to be liquidated in the interests of sound integration. Some of the functions should be transferred to other departments, others should be compressed into a newly organized agency, others should remain where they are, in a reorganized department of state, renamed, perhaps, a "department of records and registration."<sup>4</sup>

It is perfectly clear how this state of affairs has come into being. At the time of providing for a new activity, as for instance the administration of an automobile license law, the function would seem to be a very trifling one. Furthermore, at the time there would seem to be no department wherein this function could be more properly administered; and it would not seem important enough to require a separate agency. Hence it would be thrust into the department of state. That explanation is simple enough and accounts for a good many of the miscellaneous activities that load up these departments. What is not so clear at the time is that it is possible for any one of these trifling functions to grow into something very important, to expand tremendously, to get its roots deep in the department of state where it does not belong, to expand into fields that are properly the domain of other departments, and thus to aggravate and multiply the evils of bad integration and at the same time make it increasingly difficult to apply a remedy.

At the time of the origin of certain administrative activities, few people can envisage their possible enormous development. For purposes of illustration, the function of administering automobile laws

<sup>4</sup> See *Report on a Survey of Administration in Iowa* (Des Moines: State of Iowa, 1933), pp. 88, 369, 370 (compiled by the Institute for Government Research of the Brookings Institution), for comprehensive recommendations concerning the liquidation of a typical department of state.

The Brookings Institution recommended an amendment to the constitution of North Carolina to abolish the office of secretary of state. See *Report on a Survey of the Organization and Administration of the State Government of North Carolina* (Washington: Brookings Institution, 1930), pp. 18, 19, compiled by the Institute for Government Research of the Brookings Institution.

See Griffenhagen and Associates, *Report Made to the Special Legislative Committee on Organization and Revenue*, II, 252, 253, for recommendations concerning the reorganization of the department of state in Wyoming.

may be discussed, since that has quite generally been entrusted to departments of state. To begin with, there is the problem of issuing licenses to owners of automobiles—in the early days a trifling task that could be handled by a clerk in his odd moments. But consider how this task has been enlarged. Some day the legislature passes a law requiring all drivers to hold licenses. What is more logical than to put the administration of the driver's license law in the hands of those who already are administering the original automobile license law? That step in itself would seem to be definitely in the interest of sound integration, but the administrative agency in charge—perhaps a bureau in the department of state—must be more than doubled in size at one stroke of the pen in order to assume the new task. The bureau not only becomes larger but it also has much more money to spend, more political patronage to dispense, and, in a word, it becomes much more important, its roots go deeper, and it becomes harder to alter its status through any comprehensive and effective program of reorganization.

Presently more legislation is enacted concerning automobiles. Highway regulations do not enforce themselves. In addition to speed laws, there appear regulations concerning headlights, the condition of brakes, the use of trailers, the weight of cars and their loads, and other similar measures. It is idle to write these regulations into the statutes and expect them to be observed. Local police officers, although they have the power, frequently will not concern themselves seriously with the enforcement of these regulations even within the city limits, and for the most part sheriffs are indifferent to anything but the grossest violation of these laws. Even then, action on the part of the sheriff is likely to follow only upon serious accident.

Everywhere it has become apparent that automobile, truck, and highway regulations must be administered and enforced by a state agency and not left to local authorities. At first a small staff is created to do this—to see that cars are properly licensed, to see that brakes and lights and windshield wipers are in proper condition, to see that trucks are not overloaded, and that they have regulation rearview mirrors, and so on. But what an undertaking it soon becomes! Even with a huge staff of inspectors this enormous task can at best be performed only in a sporadic way. Clearly there is every reason for steadily enlarging whatever administrative agency has this function in hand. And thus an activity which at first seemed to be of negligible importance comes to be of huge proportions, and what was once a trifling example of bad integration comes to be a glaring anomaly,

for the department of state may actually come to exercise the functions of a state police department.<sup>5</sup>

In certain states not all functions of administration that have developed in connection with highway and automobile legislation have been placed in the department of state; instead they have been scattered among several other agencies. Sometimes the highway department itself is entrusted with enforcing the legislation that fixes the maximum weight of truck and bus loads because the highway department is especially concerned with preventing undue wear and tear upon the pavements. So the highway department sets up a staff of patrolmen or inspectors to be on the lookout for overloaded trucks and busses.

Also there may exist in the state a board or a commission, the duty of which is to regulate intrastate commerce. This commission may determine the proper height and width of loads, the length of conveyances, the sort of warning flags and lights that must be carried, and other similar matters. These regulations must be enforced, and so this commerce board or commission is authorized to maintain a staff of inspectors to go out on the highways and enforce these rules. At the same time the secretary of state may have a staff of inspectors to enforce the driver's license law and to examine passenger cars to see that all legal requirements are being observed. And, in addition, there may be a staff of state patrolmen working out of the attorney general's office to enforce the speed laws.

Thus here may be seen two different examples of very bad integration involving the office of secretary of state. In the one case, a wholly incongruous and anomalous function has been allowed to grow to such proportions that it almost overshadows all other services in a department that should be primarily concerned with clerical duties. In the other case, functions that ought to be grouped into one closely knit agency concerned with enforcing all the highway and motor vehicle laws have been scattered among several independent departments. This is all essentially police work and a state police agency ought to assume virtually all police duties. Of course exceptions should be made in the case of police functions that can be enforced intelligently only

<sup>5</sup> A good illustration of this is provided by the State of Iowa.

"SECTION 2. There is hereby created in the motor vehicle department under the secretary of state, an Iowa highway safety patrol.

"SECTION 3. The secretary of state is hereby authorized to employ not to exceed fifty-three (53) men as an Iowa highway safety patrol, and not more than sixty (60) per cent of such employees shall at any time be members of the same political party." *Acts and Joint Resolutions: Regular Session of the Forty-sixth General Assembly of the State of Iowa* (Des Moines: State of Iowa, 1935), chap. 48, Sec. 2 and Sec. 3.



by people of technical training, such, for example, as the enforcement of pure-food laws.

### LIQUIDATING DEPARTMENTS OF STATE

To bring about a proper re-allocation of functions may well necessitate what has been described as liquidating the department of state. But the bigger an agency becomes and the longer it remains undisturbed, the harder this liquidating process is sure to be. This is true of any branch of administration and it is particularly certain to be the case when departments are controlled by popularly elected independent officials. Such people, even the best of them, are likely to have little interest in what has here been called sound integration. These elected heads are far more interested in having their departments become bigger and more important. They like to handle larger sums of money and they like particularly to have more and more appointments to make and more subordinates to control. This is a thoroughly human desire and inveighing against it is pointless. It is quite natural for an elected chief to want to keep his post and this desire is no discredit to him. He may have left a business or profession that cannot easily be taken up again, and furthermore, it is to be hoped that he has developed a genuine enthusiasm for the public service which he has been directing. To this extent he may be a particularly desirable person to keep in office. But the point in this connection is that he cannot escape the realization that one of the best ways of keeping himself in office is to have more people dependent upon him, to be in position to do more favors for more people, to have more contacts, to handle more money, to make more and bigger contracts, and so on.

Hence a service once rooted in a department is likely to stay there if the department head can possibly hold it. Furthermore, all the employees in the department, their relatives and friends, throw their weight in favor of keeping the service where it is and enlarging it if possible. These forces are very powerful. Often they are all the more powerful because of the genuine sincerity of the people who exert the pressure. A great mistake frequently made by reform advocates is to assume that people who are in office and who oppose the suggested reform do so for purely ulterior motives. This is by no means always true.

Some departments of state have developed in singular ways other than those already described but in such instances the explanation of the development is similar to that already set forth. Legislation has been enacted in most states concerning the regulation of corporations,

the issuance of securities, the conduct of the real-estate business, and the supervision of building and loan associations. At first the legislation was limited in scope and the enforcement or administration of it involved little more than high-class clerical work and the exercise of little or no discretion. What could be simpler than to add a clerk or two to the staff of the secretary of state and let that office exercise the function?

But these duties have come to be vastly more important than could have been anticipated at the time the first legislation was enacted. In course of time it becomes obvious that if the real purpose of the legislation is to be achieved, an administrative problem is going to arise that is far more significant than mere clerical routine. If real-estate operators or building and loan associations really need to be supervised and compelled to obey regulations, an important governmental agency must be set up to formulate the regulations (within the limits fixed by the legislature), to interpret and apply them to given circumstances, and, most of all, to see that they are obeyed. It is not enough that the state office simply receive periodic statements and reports to file away. A much more important responsibility involving the exercise of good judgment and broad discretion must be assumed. Has this building and loan association really violated the regulations applicable to such institutions? Has that real-estate operator been guilty of sharp practice that would justify depriving him of his right to remain in the real-estate business? If responsibility for dealing with such problems as those is to be assumed by some administrative agency of the state, very careful attention should be given to the matter of organizing that agency and establishing it in a department where it really belongs.

Regulation of this sort is still in its infancy. There can be little doubt that it is destined to go very much farther. The possibilities of "blue sky law" administration, for instance, are prodigious. That rather inept phrase has been applied to laws whose ultimate purpose is to prevent the flotation or sale of securities that are fraudulent and unsound. In the accomplishment of this purpose there are several rather clearly defined stages or degrees of regulation which the state may undertake. Mere registration or filing of information concerning the securities that are to be offered to the public may at first be all that is required. It is at this early stage that the function may be turned over to the department of state, for it is nothing but a clerical function. The necessary papers are filed in the office and may be examined by anybody. It is not the business of the official who receives and files these papers to pass judgment upon them or to do anything about them

except to keep them in good order. Even so meager a requirement as this serves a useful purpose. The worst types of securities will disappear because those who issue and sell them do not care to make any sort of report to a public office. This is the early stage of "blue sky law" administration.

The next stage is reached when the state office is authorized to fix certain minimum standards of soundness that must be met. At this point the function of administration becomes a little more important. It is now the duty of someone in the office to see that the standards are met and to exercise some measure of judgment. If these standards are relatively simple and objective, the administrative function remains little more than clerical in nature; but it has expanded a little bit.

However it is sufficiently clear that if fraudulent and unsound securities are to be driven out of the state, an administrative task must be undertaken that will involve the services of highly trained experts in the field of corporate finance who will be authorized to exercise a very broad measure of discretion. Who is to say when a business enterprise is unsound and ought to be suppressed? Who is to order its securities kept off the market in much the same way that impure food is kept off the market? There are some fairly satisfactory objective standards which trained scientists can use for the purpose of passing judgment upon food. Standards of soundness in the world of corporate finance are by no means so clear. It is still largely a matter of opinion.

Nevertheless the public demand for safeguards of this sort is very insistent. The public wants to be protected from unsound securities just as from other harmful things. And state governments are responding to this demand.

The purpose here has not been to discuss at any length the problem of administering "blue sky laws" or of supervising certain types of business.<sup>6</sup> The chief purpose has been to make clear the importance of organizing the administrative agencies that must be involved, in such a way that when expansion comes violations of the principle of sound integration will not occur. The matter has been taken up in connection with a study of the department of state because it is so frequently that department which exhibits the most glaring violations. Being traditionally a department for handling external affairs, or contacts with the outside world, it has everywhere become a repository for important state documents and universally has in charge a voluminous amount of clerical work. It has been shown that in addition to this it may even develop extensive police functions on the one

<sup>6</sup> See Chapter XVII for a further discussion of "blue sky" law administration.

hand and very far-reaching control over the business and financial world on the other. In the modern state there needs to be a large and important department concerned with business and financial institution. In few states is there to be found a well-integrated department of this sort. Some functions which it ought to have are very likely to be found scattered about in other departments, while the department of state is cluttered with miscellaneous unrelated functions. They should be taken out and put where they belong.

#### ADMINISTRATION OF ELECTION LAWS

Administration of elections is very likely to be one of the functions of the department of state.<sup>7</sup> In some states there is to be found a board of election commissioners or some such special agency to exercise this function; but, in contrast with some of the other functions discussed above which are often found in this department, it would appear that supervision of elections is a peculiarly appropriate one to vest in the department of state.

Election laws are extremely voluminous. There is no very good reason for this. It is evidence of the determination of lawmakers years ago to safeguard the election process in meticulous detail. Officials in charge were to have the least possible measure of discretion—lest they manipulate elections to their own advantage. An effort was made to see that every question that might arise would be dealt with somehow by the law. The color of the paper on which ballots were to be printed, the size of ballots, the size and style of type, the educational and even the moral qualifications of local election officials may be prescribed in election laws. Page after page is devoted to trying to make it impossible for officials to make any decisions upon their own responsibility in such a way as to promote their own advantage.

Much of this effort has been pathetically futile. A detailed statute loaded with minutiae is manna for the corruptionist. Such statutes fall of their own weight. Very few people become familiar with details.

<sup>7</sup> "The secretary of state exercises certain powers over elections and registrations, consisting ordinarily of such matters as prescribing forms and preparing, publishing, and distributing the election laws of the state. The power to prescribe forms and records is not important, for these are usually minutely covered by the election law. In a few states, including New York, the secretary of state furnishes certain registration and election supplies, but this power does not yield any material control, though the printing contracts may be politically important. The secretaries of state of Ohio and Oklahoma appoint the local officers in charge of elections and registrations, but only upon party nominations, which deprive them of any appreciable control." Joseph Pratt Harris, *Registration of Voters in the United States* (Washington: Brookings Institution, 1929), p. 115.

Many of the provisions turn out to be almost impossible of literal fulfillment and certainly most impracticable. Indifference toward these provisions is sure to develop and custom and practice begin to supplant the statutory process.

These election laws ought to be drastically reduced in volume. Only the more important aspects of the election process need to be fixed in the law and the department of state could be held responsible for administration. Rules and regulations for the conduct of elections would have to be prescribed by the department within the limits of the law. Instructions for local election officials would have to be prepared, the form and character of the ballot would need to be certified to them, together with the names of candidates for other than local offices.

For long periods of time there would be little or no work to be done in connection with the administration of elections, whereas during a few weeks there would be a great burden of clerical work. The secretary of state, assisted by the personnel administration, would have to expand the staff in order to handle this burden, and it would be better to have such a problem dealt with by a permanent department rather than by a special agency specially set up each time elections come round. Returns should be canvassed by a state board appointed by the governor and sitting for that purpose; and it would be quite fitting for this board to prescribe the regulations to be observed in the election process.

One very important question is that of determining the measure of actual control over local election officials that should be exercised by the state administrative officers. In very few states is there to be found any degree of real authoritative control. It has been suggested here that the state administrative agency ought to prescribe rules and regulations to a considerable extent instead of their being fixed in the statutes. Power to do even that much of course involves considerable control. But mere power to prescribe rules comes far short of selecting personnel and exercising direct authoritative supervision. Should the state authorities have that power?

Local election officials as a class have an exceedingly bad reputation. In the first place there is an enormous army of them. For every polling place, accommodating a few hundred voters, there will be found from three to a dozen clerks and judges and other functionaries. These positions figure largely in spoils politics. Vast numbers of incompetent loafers, elderly ward heelers who are no longer able to hold down regular jobs, and many times disreputable, if not criminal, characters fill the ranks of local election officials. Election laws usually

guarantee that all of them will certainly be strongly partisan, for the requirement frequently is that not more than a mere majority of the election officials shall belong to the same political party. This makes it certain that every appointee will be definitely identified as being with the party in power or clearly a member of the other party. There can be no place for the skillful competent person who has no definite party affiliation.

These local election officials are usually appointed by city councils and county governing boards and except in the larger cities whatever supervision there may be is exercised by a city or a county clerical officer who is in no position to exercise real authority. Would conditions be improved if the state office appointed these people and exercised real control over them? It is somewhat doubtful. The patronage thus concentrated in one place would be enormous, although a well-developed personnel administration no doubt could cope with the problem. Certainly this patronage never should be thus concentrated until a good personnel administration has been well established. And as for direct, authoritative supervision, there is not much occasion for it if regulations and instructions are clear and the local officials are reasonably intelligent.

The introduction of voting machines greatly simplifies the task of administering elections. Despite the mechanical excellence of these machines, their speed and accuracy, and the undoubted savings in cost over a period of time, the voting machine has not by any means displaced the paper ballot. There has been, to be sure, some popular distrust, suspicion, and resistance to them; but no doubt the selfish hostility of local politicians who enjoy the patronage connected with election boards has been far more powerful. Introduction of machines would cut down this patronage considerably.

#### COMPILATION OF STATISTICS

The compilation of statistical data is a large and important task that becomes larger and more important every year. The importance of census data has long been recognized. Election statistics are important and need to be compiled in some state office and published in such form as to be useful and instructive. Much social legislation must of necessity be enacted blindly if there are no reliable statistical data upon which to base it. Statistics concerning unemployment, indigency, and relief are needed. Educational statistics concerning the school population are absolutely essential to an intelligent legislative policy. Vital statistics concerning births, deaths, and marriages are only part of what is needed

to afford an adequate picture of health conditions in the state. Voluminous statistics concerning disease and menaces to health need to be compiled. Agricultural statistics are very important and statistical data concerning taxation and finance may run into many volumes. Indeed, in virtually every field of state administration it will be found that a compilation of data is the very foundation of intelligent policy. And it should be obvious that really there is no end to the work that may be done in this connection. Of course it is possible to go beyond the limits of good sense and to make the compilation of data an end in itself.

Enormous sums of money have been wasted in gathering useless data and printing pages and pages of figures that nobody cares to use. It is easy for this to happen. Those who gather the data are not inclined to call attention to its uselessness, for the work gives them employment; and it can always be complacently assumed that perhaps it is useful to somebody else—just to whom, nobody knows. A casual glance through one of the “blue books” or “red books” or “official registers” of one of the states will provide convincing evidence. Not only are useless data often compiled and important data left ungathered, but too often the data that have been gathered have not been intelligently digested, summarized, classified, and put into such shape that they can serve the most useful purpose. This is particularly true of financial data. An undigested mass of facts is likely to produce not only great confusion but wholly wrong and misleading indications. People of very ordinary ability may do the actual fieldwork of gathering factual information, but it requires a high degree of education, skill, and special training to make a mass of data intelligible and useful. Every state has need of an office amply provided with personnel and all the modern equipment necessary to do statistical work properly.

This would seem to be a thoroughly appropriate service for the department of state to provide. In every one of the states this department does at least some of this sort of work, even if it be no more than the compilation and publication of election returns. In the interests of sound integration it would be wise to bring into one office as much of the work of this character as might be possible or practicable. But just what portions of this statistical work should be done by the department of state, and what portions of it should be done by the other departments?

## STRUGGLE BETWEEN LINE AND STAFF

Here is encountered one of the eternal dilemmas which the student of administration must continually face and never quite be able to solve in a wholly satisfactory manner. In general terms it may be described as the struggle between line and staff, using those terms in a rather narrow and special sense as pointed out in Chapter I. It is possible to classify nearly all administrative agencies as being primarily either staff agencies or line agencies. The line agency is one that is directly engaged in actually doing the work which the state has decided shall be done. A staff agency assists the line, doing very necessary and useful things, to be sure, but things which are not ends in themselves.

Illustrations abound all through an administrative structure. The department of education, the department of health, the department of agriculture, and others, are primarily line agencies directly endeavoring to fulfill the objectives of the state. A printing office is a staff agency. The state does not set up a department for the ultimate purpose of doing printing. Printing is done, even when done on a huge scale, quite incidentally, to serve other departments which are directly concerned with ultimate objectives. The giving of legal advice and the preparation of legal documents are staff functions. The state is not ultimately concerned with maintaining a law office—a law office is maintained to aid line agencies that need to have legal work done. A civil service commission is a staff agency—existing to help line agencies get competent workers. An accounting office is a staff agency—a very important one. The ultimate object of the state is not to hire people or to keep accounts. These functions are very important but wholly incidental. They are properly characterized as staff functions.

Now it is clear that every line agency could readily perform most of the staff services of which it might be in need. Thus a highway department could buy its own materials and employ its own lawyers to do its legal work. The department of education could do its own printing. Every department could hire its own employees. Each department could maintain its own little accounting office and care for its own funds in its own little treasury. In a word, each line agency would carry on its own staff functions and there would be no independent staff agencies.

However, such an arrangement is thought by most students of administration to be essentially bad. It tends tremendously to empha-



size a feeling of independence on the part of line agencies and thus to give rise to all the evils that flow from that exaggerated sense of independence—unwillingness to co-operate and a tendency to slackness and to putting emphasis upon political considerations. Furthermore it promotes extravagance, particularly in the matter of purchasing, and usually means a much lower quality of service.

#### CONCENTRATION OF STAFF FUNCTIONS

Thus it is possible to formulate something in the nature of a principle of administration, namely, that the more important staff functions ought to be concentrated in well-organized special agencies that would not be organically related to any of the line agencies. This would imply the existence of a central purchasing department, a department of personnel administration, a central law office, a central accounting office, a central bureau of records, and such other purely staff agencies as might be indicated by well-defined and sufficiently important staff services.

Right here a very positive note of warning should be sounded. This idea of the distinction between staff and line and of the segregation of staff functions can very easily be carried to absurd lengths. This is particularly true of centralized purchasing. Enthusiastic pursuit of this idea may bring it to pass that delays and virtual paralysis will occur in order that the red tape of requisitions and literal fulfillment of sacred regulations may be observed. In other words it is very easy to go beyond the point of diminishing returns and to centralize staff functions to such an extent that the very purpose of centralizing them is defeated. The staff function begins to seem like an end in itself and the real work, which is the true objective, begins to suffer in order that an unduly exaggerated principle of administration may be respected.

Here lies the root of the eternal conflict between line and staff. It is only natural that most line departments should wish to maintain their own staff functions. They always prefer to do their own purchasing, to make their own appointments, to control the handling of their own funds, and to have their own attorneys. They are inclined to be suspicious of, if not definitely hostile toward, independent administrative agencies that are supposed to serve them in such vital ways. And no wonder! A break down of the staff service may spell failure for which the line agency will appear to be responsible. Materials not available when needed, or not up to specifications when they do arrive, careless legal advice, contracts improperly drawn, unreliable statistical

data, incompetent workers certified by the personnel administration, all bring trouble to those who are responsible for doing the main job. No wonder they are skeptical of centralized staff service.

Furthermore, the segregated, independent staff agency is always in danger of exaggerating its own importance. There is a tendency to resent what seem like orders from line agencies that do not have authority to give true orders. Line departments are invariably suspected of being too impatient, of being in too much of a hurry for materials, or for legal advice, or for whatever service is being sought. Staff agencies always suspect line agencies of being extravagant, of demanding better materials than they need, of wanting more workers than are necessary. And whenever the staff agency undertakes to correct such real or fancied abuses by providing what may be looked upon as slow and inadequate service, there is bound to be trouble.

This constant clash, pull and haul, latent antagonism, cannot be wholly eliminated. It is present in business and industry. There are many ways of mitigating these difficulties. Enlightened management and the employment of high-class personnel are the most obvious. Cultivation of that subtle, precious thing, morale, is another. A highly developed sense of unity and loyalty and the spirit of co-operation will tend to obliterate this hostility altogether. But these things cannot be introduced by fiat or by enacting laws. On the other hand it is possible so to organize state administration that harmony will be promoted and friction will be less likely to develop.

It should be clear that placing all the agencies, of both types, under one superior officer is the most promising step. If both staff and line are responsible to the same superior, there is very much more likelihood of having harmony than if each is independent. Indeed, so important is this point that many students of administration believe it is almost futile to go very far with the idea of segregating and concentrating staff functions unless the governor is to have full control over all administrative activities. Otherwise the loss resulting from constant bickering and from efforts to embarrass and discredit each other more than offsets the economies and the increased efficiency of centralized staff service. In a business establishment a discreet complaint on the part of a line department foreman concerning the purchasing department, followed by a judicious word from the superintendent, will often smooth over what otherwise might be a serious and demoralizing clash. But when the attorney general's office is negligent about some legal service for the state university, or the central purchasing office fails to provide supplies for the department of education, or the data submitted by the department of state to the

board of health are inaccurate, and when every one of these agencies is aggressively independent of each other and of the governor, the stage is set for a most unedifying round of demoralizing quarrels.

All too frequently these quarrels do not break out openly. A common fear of public indignation will usually prevent that. But what does happen is that all persons concerned tend to assume an attitude of indifference and entertain the idea that it is the other fellow who is to blame. Of course this plays havoc with good administration. Thus the presence of a common superior—the governor—while not absolutely essential to the practice of segregating some of the more important staff services, is very likely to prove necessary if the idea is to be carried very far.

Even so, a dilemma still faces the student of administration. Granted that complete control is in the hands of the governor, and that an atmosphere of harmony and loyalty prevails, how far can this idea of segregating staff services be carried without going past the point of diminishing returns? There is no precise answer. The answer would not necessarily be the same for any two states. The location of the various administrative agencies, their proximity to the state capitol, and other factors, might have a bearing on the question. Firmly established precedent lying back of excellent service might well argue against changes that would seem sound on the surface. There can be no fixed rule or definite formula that can be rigidly applied.

#### DEPARTMENT OF STATE A STAFF AGENCY

To return now to the department of state, let it be clear that it is a department which can very properly be made into one of the principal staff agencies. The point has been discussed in connection with its usual function of gathering statistical data. The department of state should be primarily a record-keeping department—keeping records for the benefit of all who have a right to use them, and gathering statistics and keeping them in usable form. Such a department could be of inestimable service to all agencies of government as well as to the public generally. Line services, such as police work and supervising business, should be removed from this department and placed where they belong. The department of state should be constantly on the alert to make its records more and more useful to more departments and to more people. There is no end to what it might do in this connection by gathering more data, by putting them in better shape, by improving methods of filing, and by making more significant interpretations of data already available. To be sure there would be a temptation to

overreach. The department of education might properly compile its own educational statistics. The board of health might properly gather its own vital statistics. Such problems would be matters for compromise. The main point is that in the course of time a central bureau of records would become a veritable mine of information readily available to everyone who has a right to use it. An energetic and resourceful chief of such an office could make his services indispensable to other departments. He would not need to quarrel with line agencies with a view to taking over their record-keeping activities. Ultimately other departments would prefer that he take over the service in order that all significant records might be available in one central place and there efficiently handled by experts.

### A BUREAU OF RECORDS

There is no reason for having a department of state. This department could be largely supplanted by the proposed bureau of records. Functions which would not belong in such a bureau should be located in departments where they do belong.

About one point there need be no compromise. The head of this department or bureau should certainly not be elected by popular vote. He should be appointed by the governor and be strictly accountable to him. And, furthermore, he should enjoy a tenure of office as secure as it could be made by means of the application of sound principles of personnel administration.

## CHAPTER IV

### THE DEPARTMENT OF JUSTICE

It is customary to list the principal executive officers of the federal government in the order in which their respective departments were created and to look upon them as enjoying precedence in that order. Thus in a sense it might be said that the national secretary of the treasury enjoys precedence over the secretary of the navy and the attorney general. This means but little, except at social gatherings or in the very remote possibility of cabinet officers being called upon in proper order to exercise the duties of President due to the death or incapacity of the chief executive and the Vice-president.

There is no comparable rule of precedence in the states. It cannot be said that state treasurers outrank attorneys general or state auditors. Nor would it be an easy matter to make out a case that any one of the chief administrative offices is really more important than another. Certainly, priority in the matter of time of establishment is no guide. The oldest of all, the office of secretary of state, may easily sink to a very low level of importance, whereas a newly created department of public welfare might quickly assume such proportions as to overshadow most of the other departments. Nor does the fact that one office may be provided for in the constitution, and others by means of statute, have any bearing upon prestige or importance. One guide is the manner of selection. An appointed officer perhaps does not enjoy the dignity and prestige of one who is elected, although he himself may be vastly more competent than his elected brother officer, and may command a much larger and more important department.

However, in nearly all of the states, the principal executive officers are still elected. The attorney general certainly ranks high among them from any point of view, and because of the far-reaching nature of his duties—penetrating as they do all other fields of administration—a discussion of the work of his office is now in order.

#### TRADITIONAL FUNCTIONS OF THE ATTORNEY GENERAL

It is quite generally understood that one of the important functions of the attorney general is to give legal advice to the governor

and to all other state officers, including members of the legislature. But it is not generally understood how very important this function may be. "To give advice" sounds like a very casual duty, but it frequently entails construing and declaring the law. If a provision of a statute is vague and indefinite, or if it admits of more than one reasonable interpretation, it becomes the duty of the attorney general to say exactly what it does mean. It may be said that his office is constantly concerned with crystallizing the law and giving it a definite set or slant. Indefinite, doubtful words and phrases cross his desk, as it were, and go out with precise, clear, and positive meanings. Whoever has power to say exactly what a law means has power little short of that enjoyed by those who make the law. When the governor, or the secretary of state, or the superintendent of public instruction, or the insurance commissioner, or any one of a great many other public officials is in doubt as to what his own powers and duties are, he is expected to inquire of the attorney general, whose advice he will usually respect. When a new statute calling upon some administrative officer to carry on some new activity is enacted the officer involved may find many provisions that are not clear to him. He may construe them himself but if he has serious doubt, he had better go to the attorney general.

The importance of this power of interpreting the law may be said to vary in inverse proportion as legislation is clear and unmistakable. Certainly when enactments of the legislature are badly drawn, vague, confusing, and perhaps contradictory, the attorney general has on his hands a very important task of giving them exact meaning. Naturally, a well-drawn statute needs a minimum of interpretation. However, language is not so perfect but that many phrases in a lengthy document are almost certain to admit of varying interpretation. Indeed, so true is this that many students of government, legislators, and people generally are not a little dismayed to see the extent to which the purpose of a legislative enactment may be defeated or drastically altered by those who have power to construe it. The far-reaching influence of the comptroller general in Washington is only beginning to be fully appreciated. He has power to construe the provisions of appropriation measures and some of his rulings have shocked those who thought they understood what the law meant, and who were convinced of their misinterpretation only when the comptroller general finished explaining what it meant according to his view.

The attorney general is in a position to interpret all laws. The steady expansion of administration means that this duty becomes ever more important. Merely increased volume of legislation would have

this effect. But what is still more significant is that legislatures more and more are being compelled by force of circumstances to write the law in general terms and to leave to administrative officers the duty of making it specific. The legislature desires to grant very comprehensive powers to a department of labor, or to a department of agriculture, or to a board of health, to do all the various things which properly fall within its purview. It would be almost a physical impossibility—even if it were wise to try, which it is not—to prescribe in detail all the things which the respective administrative departments can, should, and may not do. But ultimately details *must* be faced. May the labor commissioner do this? Does the fish and game commission have authority to do exactly that? Must the superintendent of banking do just this under these circumstances? Such questions are legion. There is no end to them and their volume will become greater every year.

Let no one be so naïve as to think that all these questions could be answered at the time when the bill is under consideration in the legislature. Many enactments seem plain and simple enough until one comes to their literal application in given circumstances. Then all sorts of bothersome doubts arise. Sometimes it is the administrative officer himself who suddenly appreciates the ambiguity. At other times he assumes that he clearly understands the law and proceeds to act upon it, but encounters some private citizen who sees himself injured and who vigorously denies the interpretation which has been adopted. The administrative officer turns to the attorney general. Highway officials are continually running into these problems. Health officers need to intrude upon private rights sometimes, and they want to be sure they are within the law. If in doubt, they ask the attorney general. On the other hand, many of the questions are promptly and correctly answered by the administrative officer himself. Perhaps he or someone in his office has had legal training, and it is not thought necessary to go to the attorney general.

Not only must the attorney general interpret the law for all of the state officers and departments, but often he is greatly imposed upon by local public attorneys, city solicitors, and county prosecutors. They, of course, have their problems—which are many—and they do and should call upon the attorney general to resolve their doubts for them. Their need for turning to him, however, depends somewhat upon their own ability as lawyers and their own energy in the matter of looking up the law to find the answers for themselves. Many times the correct answers could be found by any industrious lawyer who would take the time to look up the law. Furthermore, the opinions

of the attorney general are usually published each year and thus compose a row of volumes in which can be found the answers to a great many questions that arise. An administrative officer who will avail himself of this source of information will often save the attorney general the trouble of answering a simple question and may save himself a rather curt rebuff.

Nevertheless there are enough difficult and important questions arising constantly from all these various sources to make the function of giving legal advice a large and important one. Yet frequently it is sadly neglected. The reasons for this are several. In the first place, seldom does the attorney general have a staff large enough to deal with this work in an adequate way. Under pressure of other work he is sorely tempted to neglect it. He should not be too severely criticized for this. Those who are entitled to ask for his advice and interpretations sometimes show a disposition to impose upon his office. They ply him with queries that were adequately dealt with by his office years ago, or which have been clarified by the courts in easily available court reports. They tend to fling upon his desk, as it were, simple matters which ought to be dealt with without resort to him.

This sort of thing produces its natural reaction. The attorney general's office tends to become curt or indifferent, to render offhand opinions on questions, and thus to discourage asking for opinions. Thus a vicious circle may easily be started; administrative officials lose confidence in the attorney general and cease to call upon him when they should. They make their own interpretations. Unfortunate consequences may flow from this. Similar questions are answered in different ways in different departments. A feeling of independence is cultivated in certain departments and they demand, and sometimes receive from the legislature, authority to employ lawyers to serve only the one department. Furthermore it may occur that a utility commission, a highway commission, a board of public works, or one of various other important administrative agencies that have many legal problems to deal with will cultivate an indifference toward the attorney general's office, perhaps will even take a little defiant pride in differing with the opinions rendered by his office, and will go its own way until prolonged litigation and final decision by the supreme court at last establishes an authoritative rule.

It should be clearly understood that opinions of the attorney general do not literally have the force of law. His office renders what are properly called "opinions." They are not decisions backed by sanctions. Indeed, an opinion of the attorney general may ultimately prove to be wholly wrong. The administrative officer who has relied



upon it may even find himself in a serious predicament because of having followed it. If as a result of his actions he has become liable in any way, the fact that he has followed the advice of the attorney general is no legal defense. Only the courts can render a final and authoritative decision, and such decisions may have the effect of overruling the attorney general or anybody else. However, a wrong perspective should be guarded against in this connection. Only very rarely is the attorney general's opinion overruled. A very large majority of cases involving rulings made by the attorney general are decided by the courts in accordance with his views—not because he is the attorney general, but simply because he is usually a competent lawyer whose opinions are sound.

Furthermore, it should be appreciated that by far the larger number of opinions rendered by the attorney general are never reviewed by the courts. The explanation of this is obvious and incidentally sheds a little light on why this function of the attorney general is so important. With respect to many questions that arise, there is no particular controversy. The people involved in the problem do not hold violently conflicting views regarding a given matter. The only difficulty is that the law is not wholly clear—they want it clarified—the doubts removed. It does not matter very much just what the ruling is. What is wanted is a positive explanation of what the law really is. Once the attorney general renders a formal opinion, ordinarily it will be readily accepted by everybody. There is no disposition to contest it. The ruling is acted upon, a doubt has been resolved, a precedent established, and expensive litigation avoided. Of course, anyone who is dissatisfied may go to the courts and there their objection may be sustained. But a vast majority of opinions are accepted without controversy.

Thus the attorney general's office is continually engaged in crystallizing or molding the law and pressing it into certain channels. With the vast expansion of the activities of the state, and the consequent necessity of vesting large discretion in the administrative departments, this function is destined to assume greater importance than ever before. It is clearly desirable that all the rulings and opinions hang together, that the law be made to flow in one solid stream rather than in a dozen little channels that veer off at various angles depending upon the judgments of a number of independent attorneys in various departments. A contractor should know that if he wants to sell materials to the highway department, the legal requirements concerning bids and details of the contract will be the same as if he sold materials to the state hospital for the insane. He should not have to

deal with independent law offices that hold differing views but should know that when he deals with any branch of the state government he will find one uniform interpretation of law—an interpretation rendered by the attorney general's office—which will stand as authoritative unless it is rejected by the supreme court. It is equally important that departments which enforce regulations upon the public—the various inspectional services—should follow one uniform, authoritative interpretation of the law. It is altogether bad that inspectors who examine dairies in behalf of a department of agriculture, and inspectors who investigate factories in behalf of a department of labor, for instance, should hold differing views as to their powers in situations that are altogether similar. Even when the matters involved are of trifling importance the effect upon the public is very bad and often it promotes rivalry and discord in the ranks of the administration.

Another function of the attorney general is to represent the various administrative agencies of the state in litigation. Not only do administrative officers need legal advice, but they also frequently need actual legal service. Some departments need constant legal service day after day. Presumably it is the attorney general's office which provides this sort of service. It may be the preparation of a contract, the drawing of a lease, the foreclosure of a mortgage, the condemnation of a piece of property, or the preparation of any one of an enormous variety of legal documents.

The need for this kind of service is growing very rapidly as the states expand their activities. A whole group of lawyers may be needed to deal with the legal problems arising in connection with public works. Here is a problem in administration. The presumption always is that the attorney general provides all legal services, but there have been wide departures from this. Due to the practice of making departments highly independent and placing them under the direction of elected officers, a strong desire has frequently developed to break away from the attorney general's office. It may be that the department head is actually a political rival or opponent of the attorney general. Under such circumstances the reasons why he does not care to rely upon that officer for legal service are clear. Perhaps the attorney general's office has been very negligent and uncooperative. There is nothing the department head can do about it and the work of his own department is seriously impaired. The attorney general's staff may have betrayed a lamentable lack of competence in dealing with matters submitted by the department, due perhaps to the fact that each time the department has asked for service a different member of the attorney general's staff has been assigned to do it,

and the department has constantly found itself dealing with a new attorney more or less unfamiliar with the work in hand. Furthermore, the department may be one that has enough legal work to occupy the full time or perhaps half time of one attorney, and the department sees no reason why it should not have its own lawyer. Particularly is this true if the legal work of the department is of a highly specialized character, such as the legal work of a utility commission or a commerce commission. These departments very justly feel that much would be gained by having their own attorney who would devote a definite part of his time, or perhaps all of it, to that particular work. Arguments of this character are very persuasive.

In view of these considerations legislatures have often granted authority to certain administrative agencies, notably to those that have been named above, to employ their own attorneys, who are independent of the attorney general. Undeniably there are advantages in this practice.

#### LEGAL WORK A STAFF FUNCTION

All the problems here involved clearly illustrate the conflict between line and staff which was discussed in the preceding chapter. Legal work is a staff function. The line agencies want to provide their own legal service and do not want to rely upon another department for it. The issue is likely to become particularly acute in connection with the work of line agencies which are engaged in what have been described as "control" activities. A distinction was drawn between service and control. An agency engaged in control activity is under the necessity of compelling people to obey regulations which they may not want to obey. To maintain a state hospital or university, or to build a fine bridge is one thing—to go into a bakery and compel the proprietor to clean it up, to condemn food on a storekeeper's shelves, or to oblige a factory owner to install expensive protective devices, is quite another. Administrative agencies of the control type, such as boards of health, and certain bureaus in departments of agriculture, are particularly dependent upon the attorney general's office, unless they are entitled to, and receive, active assistance from the local public prosecutor.

#### AID TO LINE AGENCIES

The problem involved here is a very important one. It is bad enough when the department of public works, or the superintendent of public instruction, has to put up with unsatisfactory legal aid; but

a department that is concerned with formulating regulations and with trying to enforce them may be stultified and paralyzed if it does not get satisfactory legal aid. In such a case, failure of the staff service is fatal to the entire project. Perhaps a bureau concerned with fire prevention has discovered a serious fire hazard and has notified the owner of the premises to remove it. He neglects to do so. The bureau reports the case to the proper law office, but nothing is done. No wonder such control agencies want power of their own in order to handle such cases. Only then can they be effective, they believe. And the argument is rather strong.

However, it should be observed that rarely does it come to conspicuous breakdown of a service. The curses of administration are indolence, negligence, carelessness, indifference, and a too ready willingness to be silent about the slackness of others and to meet it with an equivalent slackness. When the inspector finds that certain abuses which he reports are not followed up with effective prosecution, his tendency is to shrug his shoulders and ignore the abuse. When he finds that only very flagrant abuses are of any interest to those who do the prosecuting, he will close his eyes to minor violations. There may or may not be graft connected with this sort of thing. When there is, of course the situation becomes very serious. But it should be understood that there can be an enormous amount of indolence, slackness, and carelessness in administration without any overt dishonesty. Overt dishonesty, outright graft—the taking of money in return for immunity—is relatively a rare thing in state administration. But slackness, carelessness, and indolence are not so rare.

The term "inefficient" is hardly applicable here. A great many of these officers are capable, and what they do they do well. The point is, that forces are at work which often tend to paralyze them, to induce them to neglect things which they ought to do, which they *could* do, and which, in a sense, they are perfectly *willing* to do.

A general rule or principle would seem to apply in this connection, a rule suggestive of the well-known proposition that base money tends to drive good money out of circulation: when there are several organically independent administrative agencies which nevertheless must rely upon each other for mutual aid, the general level of administrative efficiency tends to fall to that of the weakest agency. A chain is no stronger than its weakest link. When there is no way of strengthening the weak link, the whole chain remains weak. When law officers are popularly elected and responsible only to their constituencies, any weaknesses which they exhibit promptly begin to permeate the whole administrative structure. The public is likely to

be aware of this unfortunate state of affairs only when prosecuting officers neglect to prosecute notorious rascals or to suppress flagrant abuses. The creeping paralysis that slowly penetrates through an administrative structure and tends to nullify the efforts of capable men is not a subject for sensational newspaper stories, and it is very difficult to explain it adequately to the public, for no single isolated example of lax administration is very impressive by itself.

It would not be fair to prosecuting officers to cast aspersions upon them without saying something in extenuation, for there is much to be said. In the first place, there is quite a strong disposition, particularly on the part of newly created administrative agencies, to formulate rules and regulations that go somewhat beyond public understanding and public patience. The health officer, the labor commissioner, the inspector of weights and measures, the fish and game warden, the fire marshal—all of whom are concerned with control activities—are strongly tempted in their enthusiasm to want to impose regulations that are calculated to stimulate considerable resistance from portions of the public. Indeed, this resistance may come from people who are in general thoroughly respectable and law-abiding.

It is the prosecuting officer—not the inspector or his chief—who must personally face this resentment and be the instrument of punishment. It is he who has the disagreeable duty of penalizing respectable men who happen to have neglected some regulation devised by an overenthusiastic administrative department. Thus the department of justice may not bestir itself when it is reported that some of the regulations concerning factories are being neglected by certain eminent industrialists, or that some loaves of bread issuing from a given bakery one day proved to be an ounce or two under the legal requirement.

Of course it is not the proper function of the prosecutor to decide that the rule is or is not unreasonable. It is his duty to prosecute violations that are reported to him. But if the regulations are unreasonable the prosecutor is almost sure to be rather slack in the matter of prosecuting the alleged offenders. An obvious remedy lies in not trying to establish rules that are unreasonable or too much in advance of public opinion. This distinction is important. Capable students of a problem in public health or conservation of resources may be convinced that such and such rules ought to be applied. Perhaps they are right; but if they go far beyond what public opinion will tolerate there is sure to be administrative breakdown and thus a fine progressive program comes to be discredited. To blame this upon the prosecutor is to ignore some very important realities. The real fault

may lie with the administrative department or even with the legislature.

Another consideration which has a marked bearing on lax administration needs to be mentioned at this point. It also involves enforcing rules upon the public. Two very important rules of interpretation concerning powers of administrative officers are deeply entrenched in the law. One is that all powers must be clearly granted. The other is that powers should be narrowly construed. There are some indications that these rules are weakening but they are still very strong. The implication of the first is that the administrative officer can do nothing except what he has been explicitly authorized to do by statute. He cannot do just what seems to be reasonable and proper in a given situation; he must remain strictly within the powers granted him. If he does something which he was not legally authorized to do, any person who is injured by his action may recover damages from him. When the administrative officer steps beyond his authority he ceases to be a representative of the government and is merely a private citizen. The fact that he has done the act in good faith, in pursuance of what he believed to be his duties, will not save him if he has misconstrued his powers and has done something he was not authorized to do.

If courts were disposed to construe grants of power to administrative officers broadly, the requirement that an officer must find authority for every act he performs would not hamper him greatly. But state courts have generally construed these grants of power very narrowly. This has had a paralyzing effect upon administration. The administrative officer must always have his eye on the statute and constantly be asking himself if he has authority to do the thing which he thinks ought to be done. And he is quite likely to resolve any doubts in his mind by *not* doing the thing. Prosecuting officers contribute to this restraining influence. Their legal training would incline them to the cautious view, and their realization of the difficulties of prosecution still further induces them to exert influence upon administrative officers *against* doing things of doubtful character.

These legal attitudes concerning delegated power and strict construction are very deeply rooted in the United States. Their origin is clear enough. They are a splendid bulwark of protection against arrogant administrative officers who would be careless of the rights of the people. These rules of interpretation then, while they serve to protect rights of person and property, are a very definite clog to administration. Here is a dilemma. Which is the more important: to protect the rights of citizens or to achieve highly efficient administration? The question as stated perhaps carries a false implication. It

is not necessary to sacrifice either efficiency or rights of person and property. It is merely a problem of striking a happy balance. The two considerations often militate against each other but are not mutually exclusive. For a very long time rights of person and property have been thought to be so very important that the public was far more concerned with protecting itself against aggressive, overbearing officialdom than with having a governmental undertaking effectively done in the most expeditious way. Thus, in the past it has seemed to most people that a farmer's right to a corner of his land is far more important than straightening a road in accordance with the judgment of competent highway engineers. The right of a storekeeper to the property on his shelves has seemed so important that inspectors enforcing a pure-food law must assume full risk and responsibility for condemning any item that should not have been condemned under a strict interpretation of the law. Of course this tends to paralyze administration.

There are many indications that emphasis has been shifting in contemporary times. More and more people are becoming interested in having governmental tasks performed more effectively, even at the risk of impairing some personal and property rights. Broader powers are being given to administrative agencies by legislatures. Administrative officers are not so often obliged to keep their eyes upon the statute in order to see that every move they make is clearly authorized. They find powers granted to them in general terms. Nevertheless, the fundamental rule still prevails—the administrative officer still must find delegated authority for what he undertakes to do. The point is, he is today granted far more leeway than he used to enjoy.

Coupled with this is a disposition on the part of many state courts to construe grants of power less narrowly than they used to do. It is a difficult problem in constitutional law to determine when a legislature has gone so far as to delegate legislative power to the administration. To do that is to act unconstitutionally. But without attempting to set up a test of what is an unconstitutional delegation of power, it may be said that enormous powers and broad discretion may be vested in administrative officers long before the point of unconstitutionality is reached. Boards of health, park boards, departments of agriculture, railroad commissioners, commissioners of health—all are being granted broader powers every year. This should make for much more effective administration, and these agencies should be able to achieve their objectives far more easily than they would if they remained tied up in detailed statutes, harried by strict interpretations, and forever under a sword of Damocles in the shape of a threatened suit for damages.

On the other hand, in the pursuit of efficiency and effective administration, there is danger of going too far. After all, personal and property rights are important. They should not be sacrificed too readily in the interests of good administration. The student of administration sometimes loses his sense of proportion and tends to look upon efficiency as an end in itself. Efficiency may well be bought at too high a price when the cost is measured in terms of personal liberty.

The attorney general occupies a very important place in this connection. When he is called upon to assist administrative officers to enforce regulations and to achieve their purposes against people who resist, his aggressiveness or his weakness becomes a determining factor in the effectiveness with which the law is enforced. It has been pointed out that administrative agencies often prefer to have their own attorneys. When this is permitted, administration is likely to be far more aggressive than otherwise.

#### SPECIAL ATTORNEYS

Another way of dealing with the problem of affording legal aid to administrative agencies in connection with the enforcement of control measures upon the public is to permit the larger and more important departments to have their own attorneys, but to make them subordinates of the attorney general. Thus a utility commission, a railroad commission, a department of public works, or perhaps some other large department might have an attorney permanently attached to the office and concerned wholly with the work of that department. Nevertheless he would be subject to instructions from the attorney general who would always make the authoritative rulings on important questions of law. This arrangement has some obvious advantages. The subordinate attorney quickly identifies his own interests with those of the department he is serving and is very much more likely to give effective service than would the independent attorney general's office. The arrangement is a fairly satisfactory compromise with department heads who really would prefer to have on their staffs attorneys responsible only to themselves. Another advantage lies in the fact that the attorney general is able to give unity and consistency to legal interpretations and to prevent the drifting apart of administrative agencies because of conflicting views as to their legal powers and duties.

But the plan has its limitations. It is applicable only to those agencies which are in need of at least half the time of an attorney. There are only a few such departments. Furthermore, the subordinate at-



torney has two masters, and that is always bad in administration. It may work when men are reasonable and co-operative, but the chances are against it. One of two things may happen to the detriment of good administration: the subordinate attorney may identify himself so closely with the department he serves that he tends to forget his responsibility to the attorney general, or he may assume the role of a hostile watchdog and even surreptitiously work against the interests of the department he is supposed to serve. At best it would require much tact and patience for a department to have on its staff one who was responsible to the chief of another department. The arrangement does work; but that does not mean that it is a good arrangement.

### INTEGRATING LEGAL FUNCTIONS

It is safe to say that the problem of giving legal aid to administrative officers, affording legal service, and giving assistance in the matter of control, cannot be solved in a wholly satisfactory manner until good integration has been achieved and genuine authority concentrated in the hands of the governor. Other arrangements are bound to be makeshifts, workable, no doubt, but far from satisfactory from the point of view of good administration. In a big industrial concern none of these problems appears in an aggravated form. A centralized law office has charge of all legal matters and all the departments in the organization make use of that central office to the extent to which they need it. The very existence of a president or manager who has authority over them all is likely to prevent the various departments from imposing upon the law office—as an attorney general may be imposed upon—and on the other hand guarantees that the law office will render good service. Thus the problems that have been discussed here tend to fade away. To be sure, no private business house faces the problem of enforcing regulations upon the public. That is a legal problem peculiar to government, and thus analogies found in the business world can afford no guide as to how to deal with one of the most important problems connected with the office of the attorney general.

### RELATION TO LOCAL GOVERNMENT

The problem of assisting administrative departments to enforce their regulations upon the public is merely one small part of the broader problem of enforcing all law. Presumably this is the fundamental duty of the chief executive. Nevertheless, due to their fear of executive power, the writers of state constitutions have usually left the

chief executive almost wholly unprovided with suitable instrumentalities with which to exercise his principal function—that of enforcing the law. This lack has been counterbalanced by the cultivation of local self-government.

County sheriffs and county attorneys are almost universally elected by popular vote and are not truly responsible in an administrative sense to any state officer. It is the duty of the sheriff to maintain the peace within the limits of his county, and he does not take orders either of a negative or a positive character from the governor or from the attorney general. He is literally his own boss. Ordinarily it would be a very foolish sheriff who would ignore the requests of the governor or the attorney general. Political considerations, if nothing else, usually would induce him to co-operate with them. They are likely to be the most influential political figures in his party and he can ill afford not to follow their orders and advice. Furthermore it is usually the sensible and proper thing to co-operate with these state officials, and a reasonable man would have no desire to do otherwise. But this is not always so, particularly when there is political discord or when the sheriff is himself enmeshed in criminal or corrupt dealings in his own county. Then it becomes only too apparent that he is not a true subordinate of the state officials.

The locally elected prosecutor also is independent of superior authority. He does not take orders from the attorney general, although he may frequently seek the latter's advice and follow it strictly. He may willingly follow the requests and suggestions of the attorney general, particularly if the two officers are bound by political ties. But as in the case of the sheriff, the elected local prosecutor recognizes no real authority superior to himself, unless the statutes have clearly stated that he must obey the attorney general. He makes investigations or neglects to do so, wholly in accordance with his own judgment. He presents matters to the grand jury or neglects to do so, initiates prosecutions or drops them, just as he sees fit. Except in a few states there is no administrative control over him.

Here, then, is an excellent example of what may be called "administrative decentralization." The state enacts the law—the local officer is responsible for its enforcement without any authoritative control from above. Administrative decentralization of this sort has occurred in many government services—notably in poor relief, public education, and highway maintenance; but nowhere has it been more rigorously adhered to than in the enforcement of criminal law. This has had some unfortunate results.

## THE LOCAL PROSECUTOR

The combination of circumstances that is calculated to paralyze the locally elected prosecutor is very formidable. One of the most powerful factors is likely to be the attitude of the governing board of the county—the county commissioners or supervisors. In their desire to keep the costs of local government down they exert a ceaseless pressure upon the prosecutor to avoid expensive prosecutions. This pressure is not ordinarily exerted in a blunt, straightforward manner. No one is likely to ask the prosecutor not to prosecute criminals because it costs too much. The pressure is far more subtle than that. The point is, the prosecutor does not want to acquire a reputation for having cost the county a lot of money. So while a thousand unimportant voices may bewail the fact that the prosecutor does not clean up conditions in the county, a faint murmur from the direction of the board members to the effect that he is squandering the county's money on useless prosecutions will tend to stay his hand. These board members do not have authority over him but they are very influential politicians and he can ill afford to be at odds with them. No wonder this has a very bad effect on the morale of prosecutors. They are loath to begin actions which they know well enough will prove to be very expensive. And they hesitate to start trials which they know may be drawn out over many weeks, particularly if the defendant has adequate resources.

There are still other reasons why the local attorney may tend to avoid prosecution of defendants who have plenty of money. Often the prosecutor is a man of very moderate ability. He may not relish a legal battle in which he will find himself arrayed against high-priced criminal lawyers who are likely to defeat him. This is a perfectly natural reaction; it does not indicate graft or even moral turpitude. It is not really surprising that he should cast about for things to do that will serve to build up his reputation without involving costly struggles that may result in his own defeat.

There are various possibilities. He may simply neglect to prosecute the doubtful cases. He may vigorously prosecute defendants when his case is so clear that there is virtually no chance of failure. He may win easy victories over inexperienced lawyers who have been assigned to the defense. Or he may persuade defendants to plead guilty of offenses distinctly less serious than those of which they are really guilty in order that he may seem to win a victory at very little cost to the public. The offender is punished, though not as severely as he ought to be, and a long trial has been avoided.

Apathy and positive obstructionism on the part of a very considerable portion of the public help to paralyze the machinery of prosecutions. The unwillingness of people to serve on juries—trial juries and grand juries as well—is widely recognized as a factor making for unsatisfactory law enforcement. Indeed a great many competent observers today want to abolish the jury system because so many evils and abuses have developed in connection with it. Certainly many prosecutors are very cynical about juries and look upon them as definite impediments to the effective suppression of crime.

An adequate study of the problem would lead far beyond the proper scope of this volume. It has been touched upon in order to consider more intelligently the possibility of organizing the attorney general's office in such a way as to remedy some of the evils. It should be understood that even as things stand in the several states today the attorney general usually has power to go into any part of the state and initiate prosecutions himself, with or without the consent or aid of the local attorney. But this seldom happens. In the first place, most attorneys general have no particular desire to develop this aspect of their function. It is disagreeable work and this sort of activity is not likely to add to their popularity.

Furthermore, the political effects of such intrusion upon the prerogatives of the local attorney are likely to be very bad indeed. All elected state officers are conscious of their dependence to some degree upon local political machines. The locally elected attorney is usually a powerful figure in local politics. An attorney general who would aggressively invade his domain is in great danger of losing that county in the next election. Furthermore, so accustomed are the people to having all prosecutions handled by the local attorney that the advent of the attorney general may create a very bad impression.

Therefore it may be expected that the attorney general will intrude to do the work ordinarily left to the local prosecutor only when that officer has been notoriously negligent and conditions have reached a stage of public scandal. Attorneys general will intervene sometimes when the local prosecutor has exhibited gross incompetence, but the situation usually has to be bad before they enter on the scene. Sometimes the local attorney will voluntarily ask the attorney general to assume the role of prosecutor in a case which, for some reason, he does not care to handle himself. Sometimes he is persuaded through political channels to acquiesce in such intervention by the attorney general. But all these cases added together would constitute a trifling number.

## RESPONSIBILITY TO ATTORNEY GENERAL

Nevertheless there is every reason to believe that significant improvement in the enforcement of law and the prosecution of criminals is going to have to wait upon the concentration of authority and responsibility in a state department of justice. The local election of prosecuting officials is not a good way to secure vigorous enforcement of law.<sup>1</sup> The public generally does not seem to appreciate this fact. On the other hand, the public is very keenly aware of some of the evils and abuses that might develop if the attorney general had power to appoint and control local prosecuting officials. For this reason reform is likely to be very slow in coming. And it must be said that the evils and abuses which might appear are very real indeed.

Particularly would this be true if the practice of having a prosecutor for each county were retained. In every state the counties are the units for party organization. The county attorney is in the very heart of the county party organization. If a state official—the governor or the attorney general—were to have power to appoint men to these key positions in the county party organizations, the opportunities for spoils politics would be enlarged tremendously. Desirable as might be the concentration of authority in connection with prosecutions, no improvement could be expected from a measure that would permit elected attorneys general to appoint county prosecutors. On the contrary the chances are that conditions would be vastly worse. The way to reform is not so simple as that.

It would seem to be desirable to get the prosecutor out of county politics so far as possible. As was pointed out above, most of the evil pressures and temptations that beset him grow out of the fact that he is intimately identified with county politics. His elective status makes him vulnerable with respect to these pressures. He can escape them only when he ceases to be elective and becomes responsible to a superior, as are the federal district attorneys. Much larger districts than the county have proved to be satisfactory as judicial districts, and for each of these there could be one prosecutor. Indeed, many states

<sup>1</sup> "All states have an attorney general's office or a department of justice headed by an attorney general. In all states, therefore, the way seems to be open for the state to direct and control prosecuting work. This can probably best be done by abolishing all local prosecutors and by giving the attorney general the necessary staff and funds for the work. Districting, if such be necessary, and the assignment of prosecutors to districts and to cases will be left to the discretion of the attorney general." Arthur C. Millspaugh, *Local Democracy and Crime Control* (Washington: Brookings Institution, 1936), p. 225.

now have judicial districts that embrace several counties each. Court sessions might still be held in every county, if the volume of judicial business justified it, but the district prosecutor need not be identified with any particular county.

Adoption of this arrangement would necessitate another change which is desirable in any event. This is to separate the function of prosecuting criminals from the other legal functions ordinarily exercised by county attorneys. At present they quite generally give legal advice to local officers and they represent the local offices and bodies politic in civil litigation. This may constitute a very considerable volume of business and it ought not to be the duty of the prosecutor. In connection with this sort of legal work he ought to be strictly accountable to those whom he represents and for whom he works, who are chiefly the county governing board. From every point of view this is desirable. But as a prosecutor he most emphatically should not be accountable to county authorities. The present combination of functions, so widely found today, is altogether unsatisfactory. It has a bad effect on the prosecutor, it means unsatisfactory service for county officers, and the public is ill-served in every way. Other arrangements than the practice of relying upon elected local attorneys should be made for providing legal service to local officers.<sup>2</sup>

Then the attorney general, as head of the department of justice, could appoint district prosecutors who would be wholly accountable to him. The attorney general himself, it has already been pointed out, should be appointed by the governor.<sup>3</sup> The federal analogy is immediately apparent. The President appoints the attorney general, and federal district attorneys are responsible to his office. Thus it can

<sup>2</sup> For a more extended discussion of this matter see K. H. Porter, *County and Township Government in the United States* (New York: The Macmillan Company, 1922), Chap. X.

<sup>3</sup> "Equally unfortunate is the practice of electing the attorney-general, yet the constitutions of forty-two states provide for his selection in this manner.\* A former governor of Indiana forcefully stated the case for appointment when he declared: 'The attorney-general is necessarily the legal arm of the executive; upon him must the governor depend for carrying forward many of the acts of his administration, and the appointment should be made by the governor. . . . I do not believe that we will be treading on dangerous ground if we give to the next chief executive of Indiana . . . the right to choose his own legal adviser, a right enjoyed by every citizen of our land, a right accorded the mayor of every city in our state and by every other executive officer from the president of the United States down to the most unassuming county commissioner.\*\*' " Macdonald, *American State Government and Administration*, pp. 277, 278.

\* Four states — Indiana, New Hampshire, New Jersey and Pennsylvania — provide for appointment by the governor, with the advice and consent of the senate. In Maine the choice is made by the legislature, and in Tennessee, by the Supreme Court.

\*\* Quoted in *Illinois Constitutional Convention Bulletins*, p. 694.

hardly be said that to do much the same thing in the states would be to make a revolutionary departure from American tradition. However the situations in the states and in the federal government are not quite comparable, although superficially they seem to be. It should be realized that, relatively speaking, the federal prosecutors have very little criminal law to enforce. An enormous majority of crimes are crimes against a state, not crimes against the United States. Furthermore, the political consequences of concentrating the power to initiate prosecutions within the states would be far more serious than has been the case with the federal government.

### APPREHENSION OF CRIMINALS

The responsibility for enforcing law and prosecuting criminals is very closely associated with the responsibility for apprehending them. Until very recent times most states had no agencies whatever for doing this. Ironical as it may seem, the governor has been held to be responsible for the enforcement of law in his state and yet he has not had at his command the humblest village constable. Throughout all the history of the United States the real responsibility for apprehending lawbreakers and maintaining the peace has rested squarely upon elected county sheriffs and city police. Only in contemporary times, chiefly since the World War, have states themselves set up agencies through which to perform in part this function on any considerable scale. For a long time various states have maintained small staffs of special agents to perform some particular duty of this kind. Thus certain states for many years have had agents whose special business it was to seek out and apprehend the makers of illicit whisky. Some states too have maintained small detective bureaus for the purpose of affording skilled assistance to local officers.<sup>4</sup> In modern times many states maintain organizations of highway patrolmen who enforce the motor-vehicle laws. But none of these are true state police forces enjoying the powers and responsibilities of the sheriff.

<sup>4</sup> "New Jersey conducts a bureau of identification within its department of State Police. As prescribed by law, the superintendent of the State Police appoints a supervisor of the identification bureau, an official who holds the rank of lieutenant in New Jersey State Police, and other personnel when needed.

"Among other duties, the identification bureau files for record fingerprints, plates, photographs, pictures, descriptions, measurements, and other information, whether it is considered pertinent or not. Records are kept of all persons convicted of indictable offenses within the state, and of well-known and habitual criminals. The findings of the bureau are made available through troop bureaus to the members of the State Police." August Vollmer and A. E. Parker, *Crime and the State Police* (Berkeley: University of California Press, 1935), pp. 67, 68.

## THE COUNTY SHERIFF

The elected county sheriff is the victim of all the paralyzing pressures described in connection with the discussion of the local prosecutor, and some more besides. Indeed, it is rather appalling to realize how many inducements the sheriff has to neglect the pursuit of criminals. No doubt many sheriffs are unconsciously the victims of these pressures and subtle inducements. The wonder is that they do as well as they do.

To pursue a criminal effectively is often a very expensive undertaking. It is no exaggeration to say that hundreds of sheriffs are daily confronted with evidence of crime, that they make a casual investigation, talk with a few people, make a few long-distance telephone calls, and then sit down in their offices to think about the things they might do if they had money, time, and men at their disposal. Let the reader for a moment imagine himself a rural sheriff. He learns of a bank robbery, a holdup on the highway, or a murder, and he springs into action. What is to be done? He wants swift automobiles, motorcycles, competent men, money to spend, and time to devote to the job. But what are his resources? He has a car, perhaps his own, and he is aware that the county board regularly frowns at the mileage claims he submits. For aides he has one or two broad-shouldered deputies. He goes to the scene of the crime and at once is aware of his inability to make a careful study of the situation such as ought to be made at once. Photographs, finger prints, interviews written out verbatim, slow, painstaking investigations are all neglected because of lack of equipment and ability and an unwillingness to incur expense. Very soon he is likely to convince himself that he has done all he can, and goes back to his office to take care of the routine duties there, many of which involve the receipt of small fees which eke out his modest salary.

This fleeting thumbnail sketch has been intended merely to give a hint as to the inadequacy of the typical sheriff's office in dealing with modern crime problems. Slowly enough this inadequacy of the elected county sheriff is being borne in upon a long-suffering public, and after some more thousands of people have been held up, robbed, murdered, or kidnapped, it may be expected that most of the states will have established fairly satisfactory state police forces.

## NEED FOR STATE POLICE

These state police forces must be something more than mere bureaus of criminal identification, useful as they have been. These bu-



reaus have provided more or less expert detective talent to aid counties and cities, but responsibility and power have not been the state's. Furthermore, state police forces should be something more than bodies of highway patrolmen.<sup>5</sup> The members of a state police force should have all the powers, duties, responsibilities, and prerogatives that have been the sheriff's for a thousand years—all the power that is implied in the sweeping phrase "to enforce the law and maintain the peace."<sup>6</sup>

### STATE POLICE AND THE ATTORNEY GENERAL

From the point of view of the student of state administration, an important problem is to decide whether the state police force should be located in the department of justice, under the attorney general, or established as a separate department under the direct control of the governor. Weight of opinion would seem to be in favor of the latter alternative. One reason for this is that in most of the states the attorney general is an independent, elective officer. In that event it is not desirable to have the state police unit located in his department. But if the attorney general himself were appointed by the governor the

<sup>5</sup> "The term 'state police' does not carry any precise meaning. It is frequently applied to loosely organized reserves which may be called into active service in emergency, or to subordinate bureaus concerned wholly or chiefly with the enforcement of the motor vehicle laws, as well as to police agencies which in point of fact are really county organizations. These multiform instrumentalities have been created as a means for supplementing the peace officers traditionally associated with the administration of rural government. Their special significance lies in the recognition of the fact that, in the preservation of the peace, the state government has a duty to perform, a right to defend, and that there are interests to protect which require its intervention." Bruce Smith, *The State Police: Organization and Administration* (New York: 1925), p. 47. (By permission of The Macmillan Company, publishers.)

"The term state police is sometimes used to include the entire group of state organizations which range from highway patrols to police forces with general jurisdiction. More frequently the term is restricted to state police services which actually possess power to enforce all laws and sufficient strength to attempt such action, as in Connecticut, Indiana, Maine, Massachusetts, Michigan, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Texas, and West Virginia. In addition, most of the remaining states have highway traffic police, with or without full police authority." Bromage, *State Government and Administration in the United States*, p. 245.

<sup>6</sup> "... Should taxpayers support both state police and sheriff's organizations in each county? Actual duplication of work of state police and of sheriffs is evident. The superiority of the former is obvious. If the dual system is not necessary for efficiency, then one or the other organization is an unnecessary drain on the tax resources of a state. The system which is put on the defensive is that of the county sheriff. Retention of urban police forces is not as difficult. State police have avoided conflict with urban officers by requesting cooperation in searching for offenders and witnesses wanted by the state who are within urban areas. Some friction is inevitable when the governor orders the state policemen into an urban center to clean up abuses, but state police do not constitute the threat to municipal police that they do to rural forces." *Ibid.*, p. 247.

situation would be wholly different and the state police unit could then very properly be a bureau in the department of justice, subject to his control.

### A BUREAU OF STATE POLICE

In addition to regular police work, such a bureau would be able to render very effective aid to the other departments in connection with the enforcement of their regulations. But it should not be assumed that the state police force should take over the whole duty of enforcing all regulations. The departments should assume some of this responsibility themselves. Just where to draw the line is not easy to say. Once a step is taken beyond true police work, the maintenance of peace, the detection and apprehension of criminals, there is no end to the chores that may be piled upon the state policeman. He might spend his time testing scales, chasing duck hunters, running around alleys looking for fire hazards, and doing a hundred and one other such things, to the great detriment of the true police service.

In the chapters that follow it is pointed out that nearly every one of the principal line departments has some police functions to perform. The attitude of those in charge of each of these departments is likely to be that the department itself should perform these functions. This is a natural reaction. Departments like to do their own purchasing, they like to select their own personnel, they like to have their own attorneys, and they like to do their own police work. To accede to such desires may be to set up a whole string of little police forces each with limited, specialized powers. This is a mistake. Police work ought to be centralized. Police powers of the respective administrative departments should be strictly limited. The presumption should always be in favor of vesting a police function in the police department. Otherwise the highway department may be policing the highways to prevent the overloading of trucks, the utilities and transportation department may be policing the highways to see that truck drivers are obeying the motor-vehicle laws, the department of state may be policing the highways to see that drivers have their licenses, the department of labor may be trying to run down incendiaries, the welfare department may be trying to seek out violators of parole, and so on.<sup>7</sup>

<sup>7</sup> In his recent book on public administration, Professor Walker summarizes the duties entrusted to various state police forces. The duties of the Connecticut state police illustrate the point raised in the text above.

"The Connecticut state police department, one of the oldest of the modern type, may be taken as an example. It is headed by a commissioner appointed by the governor for a four year term. It is primarily interested in furnishing organized and trained police service to such communities as do not maintain full-time police service of their

No one of these departments can be expected to have the facilities and resources of a well-organized central police department. In general, all of these police functions should be concentrated there.

On the other hand, certain exceptions should be made. Thus the conservation department should have a staff of game wardens exercising special police powers. The board of health should enjoy some limited police powers. And there might be some other exceptions to the general rule. But the guiding principle is clear, just as it is with respect to other staff functions such as purchasing. All departments should be able to rely upon the state police to do their true police work for them; and responsibility would rest squarely upon the department of justice, under the control of the governor himself.

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own. However, state policemen have, in every part of the state, the same authority regarding criminal matters as sheriffs, constables, and policemen in their respective jurisdictions. The duties of the force are varied, embracing many activities which would not ordinarily be considered as police work. Besides highway patrol the department is charged with the issuance of amusement park licenses, the investigation of the origin of fires and the abatement of fire hazards, the approval of the make and type of oil burners for heating purposes, the inspection and regulation of motion picture theaters, the issuance of licenses for theaters and for theater managers and projectionists, the issuance of licenses for the storage of motion picture films, the enforcement of laws relating to weights and measures, the issuance of licenses for outdoor advertising, the issuance of permits for the manufacture, storage, and transportation of explosives, the issuance of licenses for jewelry auctions, the issuance of state permits for carrying firearms, and control over fuel in the case of emergency or shortage." *Public Administration in the United States*, p. 382.

## CHAPTER V

### FINANCIAL ADMINISTRATION

A STATE must raise money by means of taxes, by borrowing, or in other ways. Administrative agencies must be prepared to do the actual work of collecting the money, to have the custody of funds that remain in their possession until such time as they are needed, to allot the money to the various services and purposes for which the legislature has made appropriations, to disburse the funds in accordance with the law, and to see that they are spent in the way that the legislature intended. These are the fundamentals of state financial administration. But how inadequate the statement seems! As with many other state administrative undertakings, the mere assertion of the ultimate objectives is a very easy thing; the actual task implied is tremendously difficult and complicated. One who would study these financial operations is immediately led into a maze of accounting practices that are calculated to baffle the layman completely. There are numerous excellent books that deal thoroughly with various aspects of state finance. But the purpose here is merely to survey the typical state financial operations which it is believed the ordinary citizen ought to want to know about and understand.

Enormously important as they are, the financial operations of the state are wholly incidental to the main purposes of government. A state does not collect taxes, float bond issues, deposit funds and make investments, maintain huge auditing and accounting divisions, just for the sake of doing these things. All of these financial activities are engaged in so that the prime objectives of the state, such as building highways, maintaining hospitals, and conserving resources, may be the more effectively fulfilled. Thus financial operations fall into the category of staff functions, as the term is being used in this book, along with most of the functions of the attorney general and the secretary of state. It is quite appropriate to study them at this point, for in going down the list of principal state officers one would get no farther than the governor, the secretary of state, and the attorney general before one would encounter certain finance officers who have always been counted among the principal officers of state administration.

## THE FINANCE OFFICERS

Certainly the state treasurer is one of these. In nearly all of the states he has been popularly elected and has enjoyed the same measure of independence and prestige that has attached to the other chief administrative officers. Somewhat less frequently, auditors or comptrollers have been elected. The functions of these two officers have been less clearly defined than those of the treasurer. Occasionally the functions implied in the titles have been performed by plural agencies such as *ex officio* boards of audit, and to a very considerable extent the true functions of a comptroller have not been performed at all.

This has been the case, too, with other very important state financial functions of administration, functions which have been assumed in modern times by such officers as budget directors, purchasing agents, tax commissions, boards of assessment and review, and departments which supervise local finance. Until the present century these newer functions, implied in these titles, were rarely considered either necessary or appropriate so far as state government was concerned. And yet in contemporary times the work of some of these new agencies has completely overshadowed the familiar old offices of state treasurer and state auditor. Fortunately these newer agencies of financial administration have rarely been made elective. No state has, or should have, a popularly elected budget director or purchasing agent. Not always has this been the case with members of tax commissions and boards of review, although in a large majority of cases the members of these plural agencies are appointed, as indeed they ought to be. In a few states comprehensive departments of finance have been created and appointed directors placed in charge of them.

This is a step greatly to be desired but very difficult of achievement for a variety of reasons. Not the least of these difficulties lies in the fact that treasurers and auditors are provided for in state constitutions. Where this is the case legislatures cannot alter their status, even though their functions must of necessity be a very important part of the work of a well-organized state department of finance. Occasionally state legislatures have gone ahead and organized such departments, leaving the old constitutional offices standing off in isolation, still independent, but bereft of some of their most important functions which may have been swept into the new department. This can usually be done, because although a constitution may provide for an elected treasurer or auditor, it rarely prescribes his precise powers and duties. Hence a legislature may sometimes strip one of these offices of its most important functions although it cannot impair the constitu-

tional status of the office itself. But such a way of dealing with the problem is never a wholly satisfactory one, often least of all to those who urge that it be done.

### THE STATE TREASURER

The primary duties of a treasurer are easy enough to grasp. He stands at his window, as it were, and receives money which the state is entitled to collect. He has custody of it and he pays it out on proper authority. Usually his office is responsible for setting in motion the machinery for enforcing the collection of revenues that do not come in as they should according to law. Ordinarily the state treasurer's office has nothing to do with enforcing the payment of general property taxes, and until recent times those taxes have been the chief source of state revenue. The duty of collecting the property tax has rested upon local authorities, either city, county, or township, and the state treasurer's duty has been to collect from local treasurers. It is they who collect directly from the taxpayers, and they are responsible for turning over to the state treasurer the amounts that are due the state. Thus, until contemporary times, the task of enforcing collections has been a relatively unimportant one for the state treasurer, and the problem of organizing his office to perform this duty has not been of much consequence. He needed only to satisfy himself that local treasurers were turning over to him the amounts that were due to the state from their respective areas.

But times have changed. Now there are state income taxes, estate and inheritance taxes, state poll taxes, sales taxes, gasoline taxes, and a variety of business and professional taxes. Indeed so rapidly have these new taxes been piled one upon another that some states have found it possible to forego altogether the general property tax, and to turn all the revenue from it over to the local areas where it is collected. Authorities on taxation differ in their views as to the wisdom of this abandonment of the general property tax as a source of revenue for the state, but in any event, whether or not it is abandoned, resort to these newer taxes places upon some state office a new and rapidly growing problem of interpreting the tax laws and of enforcing collection. A staff of collectors must be organized. If the treasurer's office is to be responsible, the treasurer must have a legal division for construing the law and applying it to individual cases. He must have a large clerical staff to scrutinize individual tax returns, to correspond with taxpayers, and to detect evasions and errors. Truly the old time function of the state treasurer—to receive in casual routine the lump

sums sent in by local officers—has changed overnight into a much larger and far more difficult task of great importance.

Should the treasurer have in his department a legal division, independent of the attorney general's office, to do the necessary legal work in this connection? The answer to this query can be found in the chapter dealing with the attorney general. He should not. Authoritative interpretations of the tax laws, as well as of all other laws, should emanate from the attorney general's office. Subordinate attorneys working in the office of the treasurer should be responsible to the chief law officer of the state, regardless of where their immediate duties may lie. Now obviously this is going to make for trouble unless the attorney general himself, and the treasurer too, recognize the same ultimate authority. Here lies an argument for bringing both under the authority of the governor.

### THE TREASURER AS COLLECTOR

When a department of finance has been created the treasurer himself may be a subordinate in that department, simply receiving the funds that are delivered to him and assuming no responsibility for enforcing collections. The work of collection, which really is not proper work for a treasurer, can be performed by a separate bureau or division within the finance department. Burdening treasurers with responsibility for enforcing collections has always been to effect a bad combination of functions. A good treasurer needs to be a high-class bookkeeper, trained to keep accounts. He should not have to be a lawyer or a policeman. The weakness that lies in thrusting these incongruous legal and police duties upon him have been illustrated in a thousand counties time and time again. Elected local treasurers have been very bad tax collectors. Many excellently qualified treasurers have had no aptitude or liking for the disagreeable task of compelling people to pay their taxes. The fact that the treasurer is popularly elected puts him at once in a desperately weak position with respect to this function. To pursue this duty of collecting taxes diligently is more than likely to make many powerful enemies and very few friends for him. At least that is what he thinks, and that amounts to the same thing. Being vulnerable, as an elected administrator always is, he greatly dislikes this duty and tends to neglect it.

Illustrations of this bad arrangement appeared in many places during the years of the depression when tax collection was particularly difficult. Candidates for re-election to the office of county treasurer in some cases published announcements explaining their own unwilling-

ness to conduct the tax sales which the law required. A few illustrations are at hand of announcements published over the signatures of country treasurers stating that tax sales would be held because the law required it; but the hope is also clearly expressed that no buyers will appear. Thus these treasurer-collectors unconsciously betrayed the weakness of the governmental machinery of which they were themselves a part. Furthermore, temptations to connive at tax delinquencies and evasions have many times been greater than local treasurers could resist. The least of the evils has been mere halfhearted effort in the matter of collections.

The chief point of this is that all our experience of a hundred years and more argues against giving to an elected treasurer the function of enforcing collections. As yet the evils of the situation have not been very apparent in the offices of state treasurers but they are sure to follow as states rely more and more upon taxes which the state itself must collect. The finance offices of the state should be so organized as to avoid these evils so far as possible. To build up the offices of elected state treasurers to perform the function of collection is not only to invite the abuses indicated but to make the situation progressively more difficult to remedy.

Another problem arises in connection with the function of the treasurer to collect and receive funds. What revenues should flow into his hands, or rather, should any substantial revenues go elsewhere than into his office? Many agencies of administration collect money. Should all collections go to the central treasury? Should the proceeds of a gasoline tax go directly to the state highway commission to be spent upon the highways? Should a fish and game commission receive directly the proceeds from the sale of licenses to fish and hunt? Should a state university retain tuition fees, to be spent by the institution for support? Should a commerce commission collect and retain truck license fees and use the funds thus raised to administer the affairs of the office? Or should all collections made in the name of the state go directly to the state treasury and remain there until the legislature has appropriated them to the various departments?

There can be no sweeping all-embracing answer to these questions or to the many more just like them. If a generalization were to be insisted upon, no doubt the answer should be that all state funds should go straight to the state treasury. Otherwise it might mean that in effect there would be many little state treasuries, each with its staff of people charged with the duty of keeping accounts and caring for funds. There would be diversity of practice, duplication of overhead in the form of equipment and personnel, probably less competent per-



sonnel in the numerous little offices than would be found in the central treasurer's office, difficulties of accounting, and many complications in connection with state budget making and appropriations. Furthermore, the practice of sidetracking funds into departmental treasuries tends greatly to augment the spirit of aggressive independence in the departments thus favored. Certainly the practice can easily be carried altogether too far and to permit it at all is to stimulate greatly a desire on the part of every agency to secure this advantage for itself if there is any source of revenue upon which it may logically seize.

On the other hand, there are situations in which the practice is not bad, and where there are indeed some advantages. This might be true in those cases where the legislature has very definitely earmarked certain well-defined revenues for a specific purpose. Proceeds from fishing and hunting licenses might be a case in point. And the case becomes the stronger if the revenue is fairly predictable and constant and is relatively not very large. A relatively small income that did not present difficult problems of accounting and investment, did not fluctuate greatly, and was all to be used for one clear purpose, might be short-circuited around the treasurer's office and permitted to go straight into the hands of those who were to use it. Of course it should be fully accounted for through a process prescribed and administered by some central finance department. Under these circumstances serious evils are not likely to develop.

Furthermore, by means of this device of sidetracking certain revenues it is sometimes possible to apply a very wholesome and desirable stimulus to those who administer the funds, and also to that portion of the public which contributes the revenue. Thus a fish and game department, or a state park board, might well be stimulated to do its work the better in order to attract favorable public attention and to stimulate more people to patronize it. And people especially interested in such activities would be stimulated to buy licenses, or to make use of state park facilities where they paid small fees, if they were sure their money went directly to support the service in which they found much pleasure. But when the income is large, necessitating the establishment of an elaborate accounting service and dealing with problems of investment, or when it fluctuates widely and is largely unpredictable, or when it is to be apportioned to a variety of services, the practice is altogether bad.

In some states the state universities retain in their own treasuries very substantial revenues derived largely from tuitions, from a variety of services that are maintained in connection with such matters as housing students, and from bequests from benefactors. Here again there

may be justification for not routing all the revenues through the state treasury. But the reasons are very different from those set forth in connection with the other example discussed above. In this instance one important justification lies in the very fact that the sums are so large. A great university is obliged to maintain a well-organized treasury and accounting division in any event. It must be prepared to handle large sums of money, most of which passes across its counters within a few days. As a result of this, some state universities have more efficient, better staffed accounting departments than even the state central finance offices. And since the university is amply equipped to handle the funds efficiently, and since the sum total of all its revenues will still be far short of what is needed to operate the plant, it might seem to involve an unnecessary duplication of effort and a large volume of additional bookkeeping operations to transfer the funds into the hands of the state treasurer. Of course all the income should be fully accounted for to the state office, and it should be reported in such form that legislative committees can readily take it into account when making appropriations. When these considerations are recognized, the practice has its advantages in terms of efficiency and economy.

In the past a few states have emphasized the independence of the university by permitting it to derive revenue from a special tax levy imposed for that specific purpose. The practice has been thought to promote a feeling of independence and security on the part of those who are in charge of the institution, and, in a certain measure, to take it out of politics. The implications of that popular but exceedingly vague phrase would seem to be that when an institution or department is out of politics the people associated with it will not be influenced by strictly party considerations and the manifold exigencies of party strife. It is doubtful if there is much truth in this.

#### CUSTODY OF FUNDS

After money has been collected by the state, some state office or department must have the custody of it. Obviously, custody of the funds is the prime function of a treasurer. This function has become far more difficult and complicated than it used to be. Not only are the sums vastly greater than they have ever been before in all the history of government, but the possibilities for wise disposal of them have been greatly multiplied. The day when the major portion of public funds could properly be stowed away in a ponderous safe in the treasurer's office, or deposited in the nearest corner bank at the dis-

cretion of the treasurer, has definitely passed, if indeed doing those things ever was good practice.

In the first place, every effort should be made to bring it to pass that public funds should turn rapidly, and that as small an amount as possible should be lying in the treasury. There are many things to do that help toward this end. They cannot be extensively explored here, but some of the possibilities may be indicated.

First, tax collections may be distributed throughout the year in order that a huge sum will not be piled up in the treasurer's office within a few weeks. Taxes may be payable semi-annually, or quarterly, or even on a monthly basis. Resort to this practice would considerably increase the bookkeeping burden in both state and local offices. It would be foolish to achieve one desirable end if an overbalancing evil were created by so doing. The idea of distributing tax collections throughout the year is a good one, but it can easily be carried too far.

The point is just as important in connection with the office of county treasurer as it is in connection with that of state treasurer. Relatively large accumulations of money that are destined to lie in the offices of county treasurers for many months before they are spent have been a source of temptation which a great many local politicians have been unable to resist. If money must be spent soon after it is collected, the problems of custody tend to disappear and with them many of the temptations to misuse the funds, to say nothing of the dangers of stupid handling. Collections derived from certain of the newer taxes, such as gasoline and sales taxes, are very readily distributed through the year, and this is fortunate. Income and inheritance taxes may also be spread to a certain extent.

Second, this problem of restricting large accumulations can also be dealt with from the point of view of spending. Within certain limits, depending of course upon the character of the work in hand, the spending agencies and departments of administration can plan their activities in such a way as to require their money in relatively small successive allotments, rather than in large lump sums at long intervals. These are problems of detail to be worked out in connection with intelligent planning. No fixed rule can be applied. Among departments conditions differ widely and the problem is one that should be worked upon constantly. There is a great tendency to get into a rut in connection with this matter and for administrative officers to fall into the easy assumption that the way the thing has been done in the past is the only satisfactory way that it can be done. An energetic and resourceful state department of finance could do a great deal by giving suggestions and help to those who are spending the public funds.

However, such suggestions are not likely to be received in good spirit by aggressively independent agencies of administration so long as they are conscious of no compelling obligation to co-operate, and so long as they are inclined to resent anything that seems like interference. They look to the law for instructions and not to fellow officeholders. And, unfortunately, this is a problem that cannot adequately be dealt with by statute; it is pre-eminently an administrative problem.

Furthermore, it must be admitted that a great many public officials, legislators often included, have had no genuine desire to solve this problem. Most men like to handle large sums of money; it promotes a sense of importance. Men enjoy the personal influence and prestige that go with power to dispose of large sums, quite apart from any ulterior desire to use them wrongfully. Hence there has been no strong disposition to attack either the state or the county problem effectively.

But in any event there are bound to be very large sums for the treasurer, or somebody else, to dispose of. For his own good, as well as for that of the public, the treasurer himself should have little or no discretion in determining where these funds should be placed. For years it has been the practice to require of county treasurers a substantial bond, and then to permit them to deposit public funds where they pleased. The inevitable result is to subject them to tremendous temptation to place the funds with an eye to promoting personal friendships, or prejudice, and with a thought of gaining personal advantage, which may be very great indeed although somewhat indirect. Furthermore, being elective officers, they are sure to be subjected to heavy political party pressure to dispose of the funds in such a way as to promote their own and their party's advantage. Influential men in political circles can bring very heavy pressure to bear upon a treasurer who is not, in a sense, protected against himself. He has the power, and if he refuses to do as these men wish him to do, he himself must take the consequences. Virtue becomes its own reward, and often he succumbs to pressure. Particularly is this so because so often he can acquiesce without deliberately doing anything wrong. It is easy for him to convince himself that it makes relatively little difference where he deposits the funds, for he thinks they will probably be safe in any event. And thus he drifts along the path of least resistance, content in the realization that he is making himself secure in his elective office. What happens is, that power supposed to be his has imperceptibly drifted into the hands of a coterie of irresponsible politicians who are actuated by ulterior motives, if not by a desire to steal public money. This phenomenon of drifting power is very subtle. The irony of it is

that many times the victim himself is unaware of what has happened. His desire to accommodate those who have helped him and who are still ostensibly his loyal friends undermines his better judgment; and so he goes along. Public funds may be deposited here or there, at the behest of unseen powers, and to serve their ends.

This situation, with many variations, has occurred many times. It has required long experience to bring it to pass that county treasurers in most states are no longer wholly free to deposit funds on their own responsibility. The solution usually has been to authorize the county governing board to indicate the banks in which county funds may be deposited, to fix by law the interest that must be paid, and to make it clear in the statutes that interest on public funds must go into the treasury and not into the treasurer's pocket. These steps have brought much improvement in the situation although many evils still remain. To be sure, members of county governing boards can play politics with public deposits too, but it cannot be done so secretly. Nevertheless, in some recent surveys the interesting fact has been discovered that county boards have tacitly acquiesced in the treasurer's exercise of personal discretion in this matter for so long a time that, although the legal power was their own, he has been the one to select depositories, and thus the old situation has not been changed in fact at all.

On the broader stage of state administration similar considerations weigh with even greater force.<sup>1</sup> There should be a small board of competent men charged with full responsibility for determining where state funds may be deposited, and in what amounts. Such a board, functioning for a department of finance, might be organically tied in with a department of banking or with whatever other department might be charged with supervising banks and with enforcing the banking laws. Within strict limitations, involving maximum rates of interest so low as to stimulate no very active competition, banks could

<sup>1</sup> "From the general surveys and special studies it is at once apparent that an almost chronic condition of misfeasance, corruption, and mismanagement exists in connection with the handling of the state funds. When the treasury balances were small, the opportunities for private gain from handling the public funds were confined within narrow limits. But with the vast increase in treasury balances there has been a corresponding increase in corrupt practices in the administration of the treasury funds. The chronic condition of dishonesty in the treasury office is a constant menace to all efforts to put the custody of state funds on an efficient and economical basis. The more important forms of graft and treasury misfeasance are outright embezzlement of the treasury funds, refusing to turn over the interest earned by the public deposits, placing large deposits of state moneys in banks controlled and run by politicians, extending credit on liberal terms directly or indirectly to the official able to influence the selection of the depository, withholding state moneys from the treasury and using them for private purposes." Martin L. Faust, *The Custody of State Funds* (New York: National Institute of Public Administration, 1925), p. 62.

bid for public funds.<sup>2</sup> It has been the practice in some states for *ex officio* boards, composed of several of the principal elective officers, to exercise this function of naming state depositories. The plan is not particularly good, for often these men who are busy in their own respective fields lack the knowledge and judgment that members of such a board ought to possess. Members of such a board should be appointed by the governor or by the director of the state department of finance.

Abundant publicity in connection with the deposit of public funds is a very wholesome thing. The treasurer should be required to issue statements at very frequent intervals showing just where the public funds are deposited and in what amounts.<sup>3</sup> Indeed, daily statements of this sort ought to be issued.

### BORROWING

The treasurer's office usually handles bond issues and other borrowing and refunding operations. Financial transactions of this sort have become very important and increasingly complex in modern times. The legislature is, of course, the proper body to determine the general policy to be followed, to authorize borrowing or a bond issue; but there will always be a multitude of details to be worked out that are fraught with very important consequences. Not only does the state stand to lose considerable sums of money and to suffer disadvantage if the terms of these financial transactions are not wisely negotiated, but all manner of opportunities arise for playing favorites among private financiers and for the practice of skillfully concealed graft and corruption. Public financing operations, national, state, and local, have always afforded temptation to private bankers to attempt sharp practices with the officials who have the matter in hand; and only too

<sup>2</sup> "In distributing the funds among the designated depositories the two important factors considered are the financial strength of the depository and the amount of security it is willing to pledge to guarantee safekeeping of the funds. It is observed that approximately only one-half the states make any reference to this basis, that is that the capital stock and surplus of the depository shall be a limitation on the amount of state funds it may receive." *Ibid.*, p. 64.

<sup>3</sup> "There is no phase of state financial administration veiled in greater secrecy than the administration of the public deposits. Frequent and careful auditing of the treasury accounts and the depository balances is essential to the protection of the public interest. Adequate publicity and reporting requirements rigidly enforced are indispensable guarantees for the maintenance of a depository system that will reduce to a minimum opportunities for personal gain. Some of our state treasurers have taken the position that handling the public deposits is a banking affair and, consequently, they regard their dealings with the bank depositories in the nature of a confidential relationship." *Ibid.*, p. 56.

often the less scrupulous type of financier has found these officers either too gullible to know that they were being imposed upon, or complacently willing to connive. City councils, county boards of supervisors, and school district trustees have left a sorry record in this connection, and many times the state itself has made no better showing than the local corporations.

No discredit necessarily attaches to the ordinary member of a board of supervisors or city council because he is unskillful and inept in these operations that have come to be so complicated. But great discredit should attach to a people that will not organize its governmental agencies in such a way as to guard against abuses so far as that is possible. Rarely has it been the case that one officer alone, be he auditor, treasurer, or comptroller, has been permitted to carry through these transactions on his own responsibility. That has been a good thing; but too often the responsibility has been placed upon *ex officio* boards of elected officials who have no aptitude for the work and who easily let the power to determine important matters drift into the hands of purposeful men who have ulterior designs. Suave and capable representatives of bond houses again and again have written their own terms into contracts for handling public bond issues, and often the victims, who are public officers charged with responsibility, have been quite unaware of their own blunders.

A suitable plural agency should exist within a state department of finance, a small board of members appointed because of their presumed skill in these matters, which should have full responsibility for handling these financial operations. It is fitting, of course, that certain of the chief financial officers should sit with this board. Arrangements of this sort afford the best possible chance to avoid sharp political deals and gross blundering. The savings to the state to be achieved in this connection are impossible to estimate.

#### SUPERVISION OF LOCAL FINANCES

The sorry record of local government in this matter has been so apparent in recent years that a number of states have taken steps to require all the local bodies politic to submit their plans for issuing bonds, and related operations, to some state office for review. This is an excellent thing if the idea is not carried too far. It would be unwise to swamp a state office literally with all the financial problems of local government.

But there are certain things the state can very properly do in the matter of supervising local finance, and they may be discussed at this

point. A good deal is heard about state supervision, or control, of local finance. These words are extremely vague. Even to say that the state audits or checks or inspects local accounts is to leave much to the imagination. It is desirable to be very much more specific.

It would appear that state regulation of local finance can extend through what may be described as four distinct degrees of authoritative control. They involve the exercising of authority with respect to (1) the legality of transactions, (2) methods of procedure, (3) efficiency, and (4) policy. The implications of each of these may be taken up in the order here presented.

Some state office, that of the auditor, or of the comptroller, or of the director of finance, may be charged with responsibility for conducting a periodical audit of the accounts of local government officials. The purpose of this audit would be to make sure that the law had been obeyed, that all accounts were accurate and balanced properly, that actual funds which the books showed ought to be on hand were on hand, and that receipts were available to account for all expenditures. In addition to these routine matters it would be important for the state office to make sure that tax rates had not been exceeded, that special funds were intact, and that debt service and sinking fund arrangements had been respected.

These are elementary matters. They constitute what might be considered an irreducible minimum of state supervision. If the state does not do this much, it does virtually nothing. Inspections of this sort need not be dictatorial as to methods of keeping books and records, as to the efficiency of personnel, and, what is most important of all, there should be no intermeddling in the determination of policy. Local officers would still be free with respect to all these matters; the state would merely be conducting a periodical audit with a view to discovering whether or not the provisions of the state law were being observed.

State supervision of such an exceedingly mild character as this is at least certainly to be desired. Wherever it has been introduced, very great improvements have been noted. There is no valid reason why local officials should object to this measure of control if it may be called that. It is not really control at all. Irregular practices, not to mention deliberate corruption, have gone on for years quite unchecked in many areas of local government. The exigencies of local politics very frequently will prevent the proper local officials from taking appropriate steps against their fellow officeholders. The advent upon the scene of a state officer from the outside ordinarily has a very wholesome effect.



Even so, irregularities continue to appear. State inspection of local accounts helps greatly toward their elimination.

However, it is often the case that not enough money is appropriated for the inspection service to make it possible to employ enough inspectors or to employ men who are well enough trained to do the work efficiently. Unfortunately this weakness in administration has been altogether too apparent. In the absence of an adequate civil service merit system, appointments to the inspection staff are in great danger of being made for political reasons and very incompetent men find their way into the service. For this reason and for others, even this very moderate degree of state supervision often does not seem to bring very good results.

Nevertheless it is much to be desired. There seems to be scarcely any valid objection to it. In every state there should be some state office or department charged with the responsibility for seeing to it that local finance officers have obeyed the law with respect to their financial operations.

The second measure of control involves the exercise of somewhat more authority on the part of state administrative officers. The state law may go farther than to prescribe duties in the body of the law itself, and may authorize a state office or department to exercise administrative control over local officers. This may go no farther than the matter of prescribing forms and methods of procedure. And this measure of control is very desirable indeed. There is no sound reason why local areas should be permitted to keep their records in whatever manner they please. There may be very good reasons for permitting small counties or towns to follow much simpler methods than are used by larger areas, but the point is that the local officers themselves should not be free to decide how they shall keep their accounts.

The reasons for this are clear. Inspection work, or auditing, becomes very much more difficult and complicated if the inspectors have to familiarize themselves with many different methods of record keeping. But what is far more important is that to an ever-growing extent it is becoming desirable to compare the financial statements and records of one city or of one county or school district with those of another. The records of a dozen counties may be perfectly sound, accurate, honest and complete, yet, if they have been kept in a dozen different ways, it becomes impossible to make comparisons that are very illuminating. It would be much better to have all the accounts kept in a uniform manner, even if the system adopted is not of the very best, than to permit each local area to follow its own method.

Not only is it desirable to compare the records and statements of one city or county with those of others, but it is also very desirable to compare current records with those of preceding years in the same city or county. If the matter is left to local whim, changes in method may occur so frequently as to make this comparison quite impossible. Let anyone who is not impressed with these considerations attempt to discover just how much has been spent in given counties for poor relief, for highway construction, or for the prosecution of criminals, in any state where uniformity in accounting is not required. There are many ways of keeping these accounts, and of keeping them accurately and wisely; but if they are not kept in accordance with some uniform standards, the problems of auditing and of making intelligible comparisons are so very great that important information will never be brought to light at all.

Still another reason for insisting upon uniformity is that state legislatures have great need of certain types of information, facts about costs of certain services and other financial data, for example, in order to legislate intelligently. If these data are readily available from only a very few cities or counties, the legislature is greatly hampered. How much does it cost to maintain county poor farms? The records of some counties will show it at a glance. The records of other counties may be perfectly accurate but the cost of poor farm maintenance may be completely buried in the records that account for all kinds of poor relief. It is impossible to find out the cost of poor farm maintenance without doing an enormous amount of extra work. How much does it cost to care for the insane? Some county records will show it at a glance, other county records will not. What does it cost to maintain county jails? It should be possible to discover this in a very short time. These questions, and scores of other questions like them, are the questions that legislatures continually must ask; and they should have them answered promptly if they are going to legislate wisely. Desirable legislation is delayed and often abandoned for no other reason than that legislatures do not have the necessary data and cannot get them readily. A state department of finance ought to be able to provide such information promptly but it can do so only if the local areas have followed uniform standards and methods in their bookkeeping.

Of course it would be impossible to anticipate all the queries that a legislature might be disposed to make. It would always be possible to ask questions that could not be answered. But, out of abundant experience, a state department manned by skillful accountants could certainly anticipate a large proportion of these probable queries and

could require that local accounts be kept in such a way as to provide the answers.

Hence it is highly desirable that some state department be charged with responsibility for devising suitable accounting forms, for originating appropriate methods of keeping records, and for seeing to it that local officers adhere to them. Such a measure of control would not seriously impair the prerogatives of local self-government.

The third step in the direction of greater state administrative control might involve a certain degree of authority over personnel, together with responsibility for seeing that standards of efficiency are maintained. Authority of this sort could be exercised through adequate machinery of personnel administration. A state department might have some power to require that those who handle local accounts measure up to certain standards of ability and fitness. Power to prescribe forms and methods will avail little if those who do the work are woefully incompetent. Locally elected treasurers, auditors, and clerks have played havoc with accounts which they have been incompetent to handle. These accounts are becoming more elaborate every year. No business corporation would pick some popular farmer, small-town merchant, or inexperienced politician to keep its books for a period of years and then choose another. And yet it is almost universally the practice for counties to do just that. Wholly unskilled men, often out of a job because they are unskilled, find their way into these local finance offices and proceed to do their work with perfectly honest stupidity and incompetence. The results are deplorable. It is high time that government be organized in such a way that some fairly adequate safeguards can be set up to prevent incompetent people from getting into these positions. The most promising way of attaining this desirable end seems to lie in setting up a comprehensive state department of personnel administration. The subject is discussed below.

The fourth step is a very important and highly debatable one. It involves very definite interference with local self-government. As regards matters of policy it involves substituting in part the discretion of some state department for that of local officials. Nevertheless the step has been taken in some states. Usually it involves requiring the local authorities to submit their annual budgets for the approval of some state office, with the implication that the state office can forbid certain proposed expenditures. If the state office is confined merely to the routine matter of checking these budgets in order to see that the law has been respected, no serious objection can be raised. Under these

circumstances the state office is concerned only with checking the budgets in order to see that tax rates have not been exceeded, that limitations upon borrowing have not been ignored, and that other requirements clearly fixed in the law have not been violated. Doing this involves nothing but accurate, perfunctory, routine work. But if the state office has power to decide that such and such an expenditure should not be made as a matter of *policy*, that is quite another thing. Thus: should the state office have power to forbid the building of a bridge, the improvement of a road, the installation of a new heating plant in the courthouse, the remodeling of the poorhouse, the enlargement of the treasurer's staff, or what not, simply because it does not seem wise to those who occupy the state office? To permit the exercise of such power as this is to begin to substitute state administrative control for local government.

There are those who would not hesitate to go these lengths and thus to give state officials a very great measure of what may be called negative control—that is, power to veto proposed expenditures. And it cannot be doubted that hundreds of counties, towns, and school districts are laboring under huge debts today because of foolish projects undertaken by local authorities. No doubt a great many of these unwise projects would have been vetoed by state departments if they had had this power of review. Township officers have purchased thousands of dollars' worth of road machinery they did not need. Counties have constructed costly bridges that were unnecessary. School districts have built schoolhouses all out of proportion to the requirements of their communities, and taxpayers have thus been loaded with burdens they ought not to be obliged to carry. It is these very impressive considerations that prompt many people to argue for an effective measure of state control which leads to what is called state centralization. The abuses are sufficiently apparent; the remedy is not so clearly indicated.

Little need be said about the emotional or sentimental factors centering around the traditions of local self-government and American concepts of democracy. They do constitute a precious heritage and should not lightly be ignored. Indeed there can be little doubt that they will serve to impede the drift toward centralization for a long time to come. But there are some far more practical considerations that weigh against centralization of this sort. In the first place it would be a tremendous undertaking for a state office to review the details of all local budgets with a view to passing upon the wisdom of the programs outlined in them. This consideration alone is a very formidable one. Furthermore, it may well be doubted whether or not subordinate appointees in a large state office would be able to exercise even as good

judgment as the local officers themselves. The experiment has not been fully tried in any state, but one may well entertain very serious doubts as to whether or not it would be feasible.

Another reason why it may be doubted whether or not state administrative review of local budgets, with power to disallow, would be a desirable thing is that such power almost inevitably sets in motion what may be called a vicious circle. The point is this: local officials anticipating slashes in their budgets will be tempted to pad their estimates with much larger proposed expenditures than are really needed. They would do this in the expectation that, after their budgets had been slashed in the state office, they would still provide for all the expenditures that had really been intended. The state office would make drastic cuts, perhaps chiefly for political effect, but the local authorities would have won the day nevertheless. Thus the vicious circle—the practice of asking for more than is really wanted in order to be sure of getting enough—is set in motion. There are a great many manifestations of this practice throughout government and business, and it would be a pity to establish the practice with respect to local government and a state department of finance.

However, this consideration would not weigh against having a state department of finance pass upon the legality of local budget programs and proposed contracts. As respects the latter, it is now the practice in some states to require that local contracts involving more than a certain fixed sum be submitted to a state office for review either as a matter of course or upon appeal. Thus it may be permitted that a prescribed number of local taxpayers may petition that a given contract be submitted for review by a state officer. Hearings may be held with a view to determining whether or not the proposed contract is a legal one, whether or not the steps leading to its preparation have in every respect conformed to law. Many bad contracts can be discovered by means of such review.

But in general, as regards this so-called "fourth degree" of state supervision of local finance, namely, passing upon proposed expenditures, it may be concluded that it is not wise for a state office to have power to do more than to pass upon questions of legality. It should not pass upon matters of policy.

#### NEED FOR A COMPTROLLER

With attention focused once again upon the department of finance it is in order to consider a remaining basic function of the treasurer—that of paying out funds. The treasurer himself should have little or

no discretion in this matter. He should pay out funds in accordance with orders properly issued by those who are responsible for passing upon the validity of claims presented. This responsibility has been traditionally that of the state auditor, or comptroller, or some plural agency such as an *ex officio* board. In no field of state administration have more far-reaching changes been wrought in recent years than in connection with this function. For long years it has been assumed that some elective officer such as the auditor, with his attention fixed upon the statute, could readily determine the validity of every claim against the treasury, issue warrants on the treasurer if the claims were valid, or refuse to do so if they were not authorized by law. Thus the function has seemed to be a simple one.

Of course the function was never quite so simple as these words might imply, but in modern times the complexities of the function have become well-nigh insuperable and have presented one of the most difficult and baffling problems of government. To one who has even quite casually followed the conflicts between the office of comptroller general and the other administrative agencies of the federal government, the broad outlines of the problem have become apparent. Many a time the comptroller general has thwarted the plans of administrative agencies, denied to them the right to spend money as they had intended to spend it, and thus has come to be a power in administration capable of challenging even the chief executive himself. The power of the comptroller general is not yet clearly defined and it will take many years finally to determine what his role in government shall be.

Similar controversies have developed in many of the states, and the problem must be dealt with. The difficulties are a natural outgrowth of the efforts of the state to do so many things, to spend so much money, and to embark upon such complicated projects. It has become literally impossible for the legislature to decree just how all the money shall be spent. All that the legislature can hope to do is to authorize great undertakings in broad and general terms. A thousand and one confusing questions arise as to the validity of specific proposed expenditures. The cold letter of the law affords no guide. Human judgment must be applied to these questions, and ultimately some officer must decide if a given proposed expenditure is to be permitted.

Who should exercise this vitally important judgment? There are many ways of answering the question. If appropriations are granted by the legislature to the various administrative agencies in lump sums, and if each of the agencies is left free to spend its money within the

limits of its own interpretation of the law, the problem is relatively simple. Thus, a board of trustees may be granted a sum of several million dollars with which to operate a state university, or to maintain a number of state hospitals, or to manage a penitentiary. A state board of public works may receive at the hands of the legislature a very large sum with which to build highways and construct bridges. Under these circumstances the function of the state auditor or comptroller may be simply to see to it that each such agency gets its lump sum and no more. There his responsibility ends. It is the duty of the administrative officers in charge of the activity to take their money and to see that their task is performed. Responsibility for staying within the terms of the appropriation is theirs. The state finance officer washes his hands of responsibility once the funds have been turned over to the agency.

This is the way the matter has been handled in the past, and still is handled in many states; and this is precisely the way in which many state administrative officers would like to have it handled. This method affords the administrative department the largest possible measure of freedom in spending its own funds. But the practice has led to all manner of abuses involving waste and extravagance. The situation has become particularly bad as the number of independent administrative departments has grown, and as bigger and more complicated projects have been undertaken. Legislatures have found themselves parceling out huge lump sums to a great array of independent offices and departments which have spent them in ways that clearly indicate carelessness, bad judgment, very poor business ability, and sometimes graft and corruption. At one hospital the cost of operating a heating plant appears to be twice as much as it is at another of comparable size. Maintenance of a clerical staff in one office runs to much more than it does in another of the same character. One office pays a great deal more for identical materials and equipment than does another. One department is far more liberal than another in the matter of expense accounts for employees on the road. Salary schedules are not uniform. In a word, each department takes its money and spends it as seems proper to those in charge of the department.

So very unsatisfactory has this situation become that legislatures have endeavored to deal with it by making appropriations more specific. The salaries of stenographers may be fixed in the law. The price that may be paid for coal may be fixed in the appropriation bill. The precise number of clerks that shall be employed in a given office may be rigidly fixed even though it may turn out that the office is badly understaffed or overstaffed. The amount which a traveling inspector

may spend for meals and lodging may be the subject of legislative enactment. The salaries of professors and janitors at the university may be prescribed. Thus the legislature may undertake—*ad infinitum*—to put administrative agencies in a strait jacket in order to prevent the waste of public funds. This has been the typical, democratic way of trying to deal with a governmental problem—not to say the American way.

There are still those who consider this a good way to deal with the matter. They would have a government of laws and not of men. A bureau chief could look to the law to see if he could buy a new typewriter when the old one wore out. The commissioner of health could look to the law to see if one of his inspectors spent too much for hotel accommodations.

The ramifications of this problem are simply multitudinous. They have always existed on a small scale, and with the enormous expansion of administration they have come to be overwhelming. Many state legislatures still flounder in this morass of detail, striving as best they can to find a way out. Each member has in mind some example of what seems to him unbusinesslike waste, and he endeavors to get the abuse corrected by means of the law.

Even if the activities of the state were to be greatly reduced, the legislature would still be swamped with problems upon which it ought not to waste its time. The way to deal with these questions is by applying sound human judgment to them when they arise, not by trying to anticipate them all and to crystallize their solution in a rigid law. Hard and fast laws cannot be a substitute for good sense and sound business judgment.

But what is the alternative? Here is the dilemma that has faced state legislatures. To many students of administration the solution would seem to lie in creating some central office in a state department of finance that would have power to deal with these questions, power to issue regulations concerning many routine matters, and power to decide what expenditures could be permitted. Obviously the function is not one to be performed by the popularly elected state auditor. There is another role for him. A new office more or less unfamiliar to American concepts of democratic government is needed. It is this new and unfamiliar role which an officer usually known as comptroller has been selected to play in recent times. The office of comptroller general has existed in the federal government only since 1921. A comparable office has appeared in several states and cities. It is still decidedly in the experimental stage. Little uniformity is to be observed in the places where it now exists, and there is by no means uniformity of opinion



among experts in administration as to just what the functions of the office should be. The federal office of comptroller general has been leading the way in bold strides.<sup>4</sup> It remains for the state to profit by the experience of that office.

#### ENORMOUS POTENTIALITIES OF THE COMPTROLLER'S OFFICE

If the office is given too much power it can lay a paralyzing hand on every activity of the state, stultify and humiliate able administrative officers, and bind the whole administration up in endless yards of red tape. In order to maintain their self-respect, to say nothing of their enthusiasm and initiative, administrative officers must have some leeway in the expenditure of funds appropriated to their departments. To put them in strait jackets is to drive the best of them out of public service and to leave the state's work in the hands of narrow-minded martinets who are content to submit their judgments on trivialities to some superior officer whose word is their law. This does not make for good, progressive, inspired administration. The problem is to find a happy medium. The legislature must be relieved of the necessity of legislating with respect to a huge mass of administrative detail. On the other hand, administrative departments cannot be left wholly free in the matter of expending their funds. And furthermore, no central office should be tolerated that could exercise a power of absolute veto in such a way as to cripple, paralyze, and stultify administrative officers. Here lies the problem, and it has not been solved. That is one reason why it is so interesting, and one which should command the attention of students of political science.

Looking toward its solution, legislatures should in the first place adopt sound budget procedure. This would involve putting appropriation bills in suitable form. The legislative act should clearly set out the purpose for which a given appropriation was made, but it should avoid details. Just where to draw the line is very hard to tell. In authorizing a state department to erect a large building, a university library or an orphanage, for instance, it would be quite in order to state just how much should be spent for the erection of the building. To fix the price of all materials to be used would be very foolish. A park board might be told in the explicit terms of the statute how much it could spend for constructing an artificial lake, but to fix the amount

<sup>4</sup> The federal office of comptroller general was severely criticized in the *Report of the President's Committee on Administrative Management*, published January 8, 1937. One very important point was that the comptroller general had usurped executive powers.

that could be spent in building a little footbridge across a narrow stream would be ridiculous. These administrative agencies must be allowed substantial sums with which to do appropriate and needful things that seem to the people in charge to be desirable. A certain amount of freedom in this connection inspires interest, enthusiasm, initiative, wholesome self-esteem, and pride in accomplishment. To destroy these is to practice sabotage upon administration. The legislature must be content to appropriate money in lump sums, dictating only with respect to broad policies and the vital aspects of the project.

Although these points have been fully appreciated by legislatures they frequently believe that to give administrative departments too much freedom is to invite still worse evils. Out of this dilemma presented by two extreme views the office of comptroller is emerging as an experimental device. As the tendency grows to couch appropriation measures in very broad terms, conveying large lump sums to administrative agencies for the purpose of carrying on very elaborate undertakings, another tendency is likely to grow, namely, to create a central office with power to interpret the terms of these broad grants with authoritative finality.

One method is to compel all spending agencies to come to the comptroller's office periodically, every three months, for instance, in order to receive another installment of the total amount appropriated for the use of that agency. At such times the spending agency would present a statement showing just how it had spent its money during the preceding quarter and just how it proposes to spend the new allotment during the coming quarter. Such procedure affords an opportunity for the comptroller's office to discover unsound business practices, to make rulings with respect to financial practices of doubtful legality, to interpret the law under which the project is being carried on, and perhaps to bargain with administrative officers concerning the possibility of getting along with less money than the full amount authorized by the appropriation act. There are so many varying degrees of power and authority that may be vested in the comptroller's office in connection with these matters, and there are such wide differences in practice among the few states which have developed such an office, that the student can find little ground on which to base confident judgments as to just what the best practice may be. For many years to come a vigorous conflict is likely to go on between administrative agencies which have been traditionally independent and wish still to be so, and these new central finance departments which will seek to become ever more powerful. It requires only a little imagination to picture a comptroller, or state director of finance, be-

coming a financial czar. And the evils growing out of such a situation might possibly be much worse than the evils of permitting administrative agencies to spend their money as they see fit. Administrative officers themselves are naturally much inclined to think so.

Nevertheless, a casual survey of the problem leads to the conclusion that there are numerous matters on which a central finance office could exercise authority to great advantage. A comptroller's office might very properly establish regulations concerning the amounts to be allowed as traveling expense for people engaged on state business, and claims which did not conform would be disallowed. This would prevent variations in practice among the departments. Regulations could be established concerning the negotiation of contracts, conditions under which bids should be received, and other aspects of this very important business routine. Standard practice with respect to a great many financial operations could be defined, and the comptroller should be in a position to disallow claims if standards had not been observed. Even within such a limited field as this a state comptroller's office could do a prodigious amount of good, could put a stop to very unsound and extravagant business practices, and could bring about a desirable measure of uniformity of practice among the spending agencies. But if the comptroller's office is permitted to go much farther than this, and to pass authoritative judgment on matters that involve fundamental policy and program, a wholly different problem is presented. It is all very well for the comptroller to dictate the details of procedure with respect to calling for bids and letting a contract for a piece of construction work which the department of public works has decided that it wishes to undertake, but it would be quite another thing for the comptroller to rule that the project itself was not feasible, or was unnecessary, and thus should not be undertaken at all. With respect to major undertakings, the law should leave no doubt, but there are hundreds of smaller projects and undertakings about which the law is necessarily silent. It is in this field that the powers of the comptroller, or central finance officer, need to be clearly defined. The very project itself may be a most unwise or unbusinesslike undertaking even though all the business procedures connected with it are handled in the most approved manner. Is it for the comptroller to say so, and thus to defeat the purposes of the department concerned?

It is often said that the comptroller should be the watchdog of the treasury and see to it that the law is obeyed, that the will of the legislature is respected. That is all very well so far as it goes. The comptroller should indeed be in position definitely to refuse to allow expenditures that have not been clearly authorized by law. But to let

the matter stand thus is to beg the question. There are enormous fields within which discretion must be exercised, and with respect to which the law affords no conclusive guide. And these fields are becoming broader every year. An administrative agency with millions of dollars at its disposal is obliged to make a multitude of very important decisions as to what things shall be done. Should some authority outside of the department itself have power to review these judgments?

This is the issue that has been raised many times in connection with the work of the federal comptroller general's office. Again and again the departments of administration have vigorously challenged his right to forbid doing things which he believed were not authorized by law. Usually there has been ample room for wide differences of opinion. Is he to have the final word? To answer this question in the affirmative is to make of him a very powerful chief administrator, or else to drive the legislature back to the old practice of trying to make the law so comprehensive and clear that no room for difference of opinion can remain. And in either event the tendency is to belittle and to stultify the administrative officers themselves. Neither of the alternatives is so very satisfactory, and that is one reason why the problem is not likely to be solved until there has been considerably more experience. While it is very desirable that legislatures should make their meaning clear, it is not desirable that they should try to write into the law all the minutiae that would be necessary in order to control in detail the activities of administrative departments.

There is no substitute for common sense and a legislature cannot legislate common sense into a state comptroller's office. Nevertheless a satisfactory solution of the problem is likely to depend upon the good sense and sound judgment of men who occupy the office of comptroller. They can establish precedents that will soon crystallize in such a way as to have the force of law, and a very desirable practice can thus be established which the letter of the law could never clearly define. Indeed, the impact of personality and adventitious circumstance upon the administrative process can have very far-reaching effects. If the first incumbent of a new office begins to exercise his new functions in a thoroughly sensible and reasonable way, and if he possesses a strong personality together with some tact and patience, he can secure the co-operation of other officials with whom he has to work and presently establish ways of doing things that solidify into precedents which will have tremendous weight in the future. If he has a nice appreciation of what is really important and what is merely petty, if he has the tact and judgment to insist firmly upon what is vital and to ignore what is not, he can win to his support the

most influential men in public office and get his department upon the path to real success. Precedent has great weight in administration. Newly installed administrators in an old office are under tremendous pressure to follow the path their predecessors have trod, for good or for ill. The office of comptroller is a new one in the structure of American state government. Statutes cannot guarantee its success for it is peculiarly vulnerable to the impact of the personality of those who occupy it. Real success with it must wait upon the efforts of able men to make it fit into the American scheme of state government.

#### RESPONSIBILITY OF THE COMPTROLLER

Still another matter concerning the status of the comptroller remains to be touched upon. Should he be responsible to the chief executive or to the legislature? American legislatures have made few serious attempts to compel administrative officers to recognize direct responsibility to the lawmaking body. The legislature can call for reports, the senate usually has considerable power in connection with approving appointments, the lower house enjoys an extensive power of impeachment, and legislative committees with great powers of investigation may be set up. But in very rare cases does the legislature directly choose administrative officers, or have power to remove them, or exercise direct administrative control over them. Nevertheless a very respectable body of opinion holds that the comptroller is an officer who should be responsible to the legislature, who should be chosen by the legislature, removable by the legislature, and accountable to nobody else. If the office develops along lines that involve the exercise of broad discretion in the matter of interpreting finance measures passed by the legislature, it may be expected that demand will grow for making the comptroller accountable to it instead of to the governor. But if on the other hand the comptroller's office exercises merely routine functions, and only applies regulations clearly set forth in the law, thus leaving discretion to the various department heads, then there would be little reason for the legislature to want to exercise authoritative control over the office.

As yet the problem has not been finally solved on the national stage. The comptroller general is appointed by the President with the consent of the Senate. However, his term of office is fifteen years, a fact which would seem to imply that the President is not to be expected to exercise control over him. Holding office for fifteen years, it is obvious that he might possibly serve during the administrations of three or even four different Presidents, and he might well have to

serve during the administration of a President who belonged to a political party other than his own. This situation would be intolerable if he were supposed to be responsible to the President, and if at the same time he were to exercise power of a broad discretionary character. On the other hand, since the party complexion of Congress itself may change from term to term, it may be supposed that serious difficulties of a similar character might arise if the comptroller were responsible to Congress.

To some observers these problems do not seem to be important, for they think of the comptroller as having clear-cut responsibility for simply seeing to it that the law is obeyed. And they believe that whoever has this task should not be subject to the control of those who are to spend the money. Indeed, the comptroller's chief concern is to compel these spending officers—the chief executive and his subordinates—to respect the mandates of the legislature. This view is quite understandable and has much merit, but it is a trifle naïve. It implies that appropriation acts are perfectly clear and admit of but one valid interpretation, an interpretation which the comptroller will fully understand. That is not true at all. As has already been pointed out, appropriation acts that envisage huge projects of administration necessarily leave room for very important differences of interpretation. The question then is: should the chief executive and the spending departments enjoy this discretion, or should it center in the office of the comptroller, who in turn would recognize responsibility to the legislature alone?

The implications of the question go to the very heart of the problem of responsible government. In the language of political science, American chief executives are not responsible. This means that they are not directly accountable to legislatures which might control them. Many students believe this situation is bad and they see a possibility of correcting it by setting up a comptroller who will be responsible to the legislature and thus hold the executive in check. They might be willing to have the chief executive appoint the comptroller, but they would not be willing to have the executive exercise authority over him. Certainly they would not permit the executive to remove him. This view is reflected in the federal law which makes the comptroller removable directly by Congress. Nevertheless it is still an open question whether or not the President himself can remove the comptroller general. The implications of the act creating the office would seem to be that he cannot, and yet, in the light of the famous Myers case, there would seem to be grave doubt as to the power of Congress to limit the President's power of removal. The question has

never yet been brought to issue. A decision on this point would be a very significant one and might well determine whether or not under our system of constitutional government Congress has power to exercise authoritative control over the actual process of spending public funds.

The issue would not be so acute in the states, since state governors do not enjoy the enormous prerogatives of the President in the matter of removals. There seems to be no reason why state legislatures cannot establish comptroller's offices wholly outside the governor's control and make them strictly accountable to the legislature. With the power of governors steadily growing, as it certainly is, there is sure to be strong incentive for legislatures to do this. The consequences would be very far-reaching and would tend to make the governor's position somewhat anomalous, but it might be a step in the direction of responsible government that would not necessarily involve a clear-cut abandonment of the American theory of the tripartite division of powers. A solution of the problem lies in the future, for the states have not yet grappled with it. Meantime the experience of the federal government should be viewed with intense interest.

### THE STATE AUDITOR

State auditors enjoy a variety of functions. In the past their chief function has been to authorize payments from the treasury. In some states they have performed this function singlehanded, in others they have been allowed to authorize payments only after claims have been approved by a board of audit that often consists of a group of state officers sitting *ex officio*. In the preceding pages it has been explained how this function is being shifted into the hands of comptrollers. This shift may be expected to continue. What then should be the chief function of the auditor? It is, and should be, to audit.

All public accounts should be audited either continuously or periodically. This is a large undertaking and is important enough to be the sole function of a single department. The auditor's office should stand apart. That officer should have an adequate staff of skilled accountants whose duty it should be to inspect periodically, and often, the financial records of all state and local spending agencies. Practice in this regard is not uniform in the states. In some states certain spending agencies of state government are not subject to the inspection of the state auditor at all. Their accounts are audited periodically by private firms of certified public accountants that receive substantial fees for doing it. In many states the accounts of local

officers are not audited by the state but by private firms at irregular intervals when local governing boards such as city councils and county boards of supervisors decide to have it done.

This is not good practice. It is very expensive, likely to be done at irregular intervals, and not often enough. Frequently such audits take on the character of hostile investigations having for their purpose the exposure of the officials whose accounts are being investigated. There should be one state office, under the direction of the state auditor which should be responsible for auditing the accounts of all state and local spending agencies and the work should be done as a matter of fixed routine. The results of such audits should always be on file in the state auditor's office, and irregularities should be reported to the attorney general for appropriate action as a matter of course. Only rarely is there an excuse for the audit of public accounts by private firms.

The auditing function here under discussion is that of post-audit which term implies inspection of accounts after transactions have taken place with a view to discovering whether or not there have been any irregularities. Post-auditing is to be contrasted with pre-auditing which implies inspection before transactions have taken place with a view to forbidding a proposed improper expenditure. The function of pre-audit is that which was discussed in connection with the comptroller's office. In some states a limited power of pre-audit is vested in the auditor's office while the function of post-audit is scattered among various state and local agencies and private firms. This is not to be desired. The state auditor's function should be that of post audit alone.

#### INDEPENDENCE OF THE AUDITOR

With this idea in mind it is quite clear why the state auditor should enjoy a large measure of independence. He should not be subject even to the indirect control of the governor, under whose direction so much public money is expended. There are many who believe that he should be popularly elected in order that his independence may be guaranteed. This is urged in spite of the fact that popular election is not a good way to secure a competent administrator who is possessed of technical training. This difficulty might be obviated in part by requiring that no one should be eligible for the office who did not have a certain definitely prescribed professional standing. An alternative to popular election might be selection by the legislature. But in any event the auditor should be outside the highly integrated structure of administrative agencies functioning under the contro



of the governor. Only under such circumstances can he be expected to enjoy the independence that is essential to the conduct of a thorough and disinterested audit of accounts.<sup>5</sup>

### ACCOUNTING

A minor question arises which has to do with whether or not his office should prescribe accounting forms and bookkeeping methods. It would seem that his office should not have this duty. The governor, the department heads, and the comptroller are all very deeply concerned with accounting methods. It would be much better for the comptroller to prescribe these forms and to see that they are installed. Methods of accounting, so long as they are adequate, should be a matter of indifference to the auditor. They are not a matter of indifference to those who are working with them every day and to those who must scrutinize them constantly with a view to having a grasp of the situation at any given time and to altering plans and policies in the light of what the accounts show. A competent certified public accountant is prepared to go into the offices of a dozen business houses which keep their accounts in a dozen different ways and to audit them efficiently. The state auditor should be equally versatile. Without a doubt his opinions and advice should have much weight with those who devised the forms and methods, but the auditor's function should be to audit and not to dictate methods of accounting.

### COLLECTION OF TAXES

There is every reason to believe that the state itself will be called upon to assume more and more direct responsibility for the administration of tax measures. This is true for at least two reasons: (1) independent local authorities have proved to be very unsatisfactory agencies through which to administer the general property tax; and (2) states are resorting to new kinds of taxes which it would be most inexpedient, if not impossible, to administer through independent local agencies.

<sup>5</sup> "In case the office of lieutenant-governor is abolished, then the auditor should be retained on the elective list for two reasons. The first is in order to give him a position somewhat independent of the administration, which might be emphasized by electing him at a different time from that of the gubernatorial election. The second reason is in order to provide an officer of state-wide, instead of local election, to succeed to the governorship in case of vacancy in that office. In case the office of lieutenant-governor is not abolished, the second of these reasons for electing the auditor no longer operates, and it would be better that the latter be appointed by the legislature as its agent in keeping a check on expenditures." Mathews, "State Administrative Reorganization," *op. cit.*, p. 392.

The first of these considerations led long ago to setting up some kind of state administrative agency for the purpose of supervising, assisting, or correcting the errors of independent local officers.<sup>6</sup> These agencies usually have been state boards of tax appeals, state tax commissions, or state boards of assessment and review. The plural agency was set up because the function involved the exercise of considerable discretion, and duties of a quasi-legislative or quasi-judicial character. The agency might be of an *ex officio* character, composed of certain of the principal elected administrative officers, or it might be a group appointed by the governor to hold office for relatively long overlapping terms. In either case these agencies have almost invariably been wholly independent of the other agencies of state financial administration.

Even if the state itself relies very little, or not at all, upon the general property tax as a source of revenue, there ought to be some state office competent to exercise a measure of control over the administration of the general property tax. This tax is still the chief reliance of the areas of local government—the cities and towns, the counties, and the school districts—and most of the states still rely upon it for at least a portion of their income. The basic idea of the general property tax is very simple indeed. The idea is that all the property of every person residing within the state will be evaluated in terms of dollars and cents, that is, “assessed,” and that rates will be levied against this property, usually in terms of mills, by the various bodies authorized to levy taxes. The entire process, and the theory lying back of it, is thoroughly unsound in many respects, but it is not the purpose here to go into that matter. The general property tax, bad as it is, is no doubt destined to remain for a long time. The aim here is to consider the best ways and means of administering it.

The first step in the process, obviously the vital one, is that of making assessments. Some government official must have the responsibility for determining the value of the property owned by every person within his jurisdiction. This officer is universally known as the assessor.

<sup>6</sup> “State tax administration is generally conceded to be more efficient than local administration. The state, with its wider jurisdiction, can reach effectively wealth which the local district fails to tax, either because the owner of the wealth lives outside of the local district or because the wealth itself is removed when taxes are imposed. Another reason for state administration is that central control and assessment are apt to be more impersonal and consequently more equitable than local administration. Furthermore, in the case of many taxes like the corporation taxes, local assessment means a piecemeal and, consequently, an inaccurate assessment. In assessing a railroad no one local district is likely to have knowledge of its value as a going concern. In such a case state assessment seems imperative.” Ruth Gillette Hutchinson, *State-Administered Locally-Shared Taxes* (New York: Columbia University Press, 1931), pp. 20, 21.

In a number of states he is popularly elected by the voters of each township. Usually also there are city assessors, and in states where there are no townships the assessor is an elected county official. Being popularly elected he is independent of any other authority. Appeals may be taken from his assessments, and boards of review have some power to alter his findings, but that is far from meaning that anyone has authoritative power to supervise his work or control him in any way. Being independent of any administrative control he is responsible only to the voters, and it appears that very stubborn resistance will meet any efforts to change his status. In states where he is an elected township officer vigorous efforts have been made to substitute an elected county assessor in his place, but little progress has been made along these lines.

A multitude of factors contribute to the assessor's difficulty in doing this work well. Since he is popularly elected there is no assurance whatever that he will be fitted for the task, and the task becomes more difficult every year. An enormous number of incompetent people are elected to the position and there is no reason to believe this situation will improve. The position is not usually well paid and it is frequently abandoned to candidates who have been failures in private life and seek a sinecure that promises opportunity for petty graft and political preferment. The pressure upon him to keep assessments low comes from every quarter. Naturally every property owner wants his own assessment to be low, and the desire of the entire community is to have the sum total of assessments for the jurisdiction low, because, if the total assessment for a township is relatively low, the taxpayers of that township will pay relatively less than neighboring townships toward county taxes. And if the total county assessment is low, the people of that county will pay less in state taxes. Hence the pressure becomes general and converges upon the person of the elected assessor.

The assessor cannot escape this pressure, no matter where he turns. He has no inducement or encouragement from any quarter to make assessments what they really ought to be, while he does have a great many very practical and compelling inducements to do otherwise. Furthermore, the multitudinous and obvious iniquities of the general property tax are calculated to induce even a capable and honest assessor to keep his assessments down. He knows that to assess the property of one owner at true full value, when thousands of others have been able to conceal large portions of their property, is to work gross injustice to the owner whose property is assessed at full value. He realizes that there is much property that he cannot locate, and he en-

deavors to bring about rough justice for those whose property cannot be concealed. He sees no justice in assessing a farm worth ten thousand dollars at its true value, and indeed there is none, when he knows full well that owners of stocks and bonds worth much more than that have not declared their property at all. To do his duty literally with respect to property that he can see is to do great injustice as well as to invite defeat in coming elections.

Even if it were not for all this pressure, even if property owners were helpful instead of the contrary, even if political considerations all weighed in favor of the assessor's doing his duty as the law intends he should, his task would still be a very arduous one. To fix accurate values upon land, which can be seen and measured, is no easy undertaking; to fix values upon buildings of every kind and description—houses, stores, office buildings, factories, and hotels—is vastly more difficult. To fix fair values upon tangible personalty—household goods, stocks of merchandise, jewelry, farm animals, machinery, and what not—is next to impossible. To fix values upon intangible personalty, stocks and bonds which are largely concealed, is still more difficult. No wonder the elected assessor gave up long ago and permitted the general property tax to bog down into the abomination it has now become in many jurisdictions. Nevertheless it is still with us, and students of administration may eventually find ways to make it somewhat less obnoxious than it has been in the past.

The first step is to do away with popularly elected township or small-district assessors. Constant agitation may bring this to pass since many forces calculated to bring about the abolition of township government in the states where it still exists are now at work. Another and much more difficult step is to discontinue the popular election of the county assessor and, in lieu thereof, to bring about his appointment. By and large this is very desirable for two reasons: (1) it would be far more likely that competent people would be selected; and (2) it would tend somewhat to relieve the assessor of political pressure and at the same time make him subject to supervision and control. If county governing boards were entrusted with responsibility for appointing a county assessor, they would not be entirely unmindful of the need for selecting a person of fair qualifications, even if they were not constrained to do so by a civil service merit system. Another method of appointing county assessors would be to permit a state tax commission to do it, but this would be a step in the direction of centralization that certainly would encounter very formidable resistance. A compromise method would be to permit the county governing board to appoint with the consent of the tax commission. Any

of these devices would be much superior to the widespread practice of popular election.

A great many of the familiar evils associated with the general property tax would be eliminated by these steps and there would be less need for review of the assessor's work. Committees of township or county governing boards, or of city councils, usually sit to review the work of assessors and to make adjustments in individual assessments. This practice is frequently accompanied by more or less favoritism, bribery, and corruption, and would not need to be resorted to on such a scale as it now is if the work were better done in the first place. It is not likely to be done very much better until assessors not only are free of political pressure, but are also conscious of responsibility to some higher authority for doing their work well.

### A STATE TAX COMMISSION

But there are other reasons besides the need for improvement in the process of assessment for having a state tax commission. There is need for a state agency to administer the new taxes. The state tax commission should administer income and inheritance taxes. It should administer such special taxes as a cigarette tax and a liquor tax. Business and corporation taxes should be administered through this agency, as should also gasoline taxes and sales taxes. Payroll taxes levied in connection with unemployment insurance projects, and other new kinds of taxes levied in connection with old age assistance programs, might be handled by this agency.

Of course there is no reason why some of these revenues should not be collected through other channels. Such collection devices depend largely upon the type of agencies set up to carry on other administrative tasks. Thus, very few states have as yet set up machinery for administering unemployment insurance programs. The local offices provided for in connection with this task might be charged with some responsibility for collecting part of the revenues for financing such projects, particularly the taxes on employees themselves. Or, on the other hand, employers might be made responsible for collecting the taxes imposed upon employees, in which case the local offices would probably have nothing to do with collections. If poll taxes are imposed in connection with old age assistance programs, they might be collected through the same offices that collect property taxes. Thus it would be unsound to make the sweeping assertion that all taxes should be collected under the supervision of the state tax commission.

A great many different fees and license taxes are imposed by state law. Some of them should be collected through the administrative agencies that are concerned with the purposes for which the fees or license taxes are imposed, then turned in to the state treasury. Automobile license fees, for instance, would be collected by the agency responsible for issuing automobile licenses. Fees for hunting and fishing licenses would be collected by the agency responsible for issuing these licenses.

No useful purpose would be served by requiring that all revenues be collected through one central agency. Whatever else it might have to do, the chief purpose of a state tax commission would be to bring order out of chaos in connection with administration of the general property tax, and to assess directly the property of transportation and utility companies and certain other corporations that cannot be satisfactorily assessed through local offices. The state department should also be prepared to administer state income and inheritance taxes and various special taxes that have come to play such an important part in state revenue systems.

## CHAPTER VI

### THE BUDGET SYSTEM

No money is supposed to be paid out of the public treasury unless the expenditure has been authorized by law. That simple rule has an ancient and honorable origin. It imposes squarely upon the legislature a very important responsibility and an exceedingly difficult task. This task, like most other tasks of government, has become very much more complicated in contemporary times than it has ever been before. This is true not only because governments today are spending vastly larger sums, but also because these sums go to finance such a multiplicity of services. The individual legislator is likely to be overwhelmed with his responsibility for passing judgment upon the wisdom of proposed expenditures for an enormous variety of purposes.

A hundred years ago the task was very much simpler. In those days an individual legislator could prepare a bill providing for the expenditure of a sum of money for a given purpose. It would be introduced in the legislature, referred to a committee, and from that point go forward through the usual channels to possible enactment. Under the American system every member of the legislature has always been free to introduce as many such appropriation bills as he pleased, and in the old days each member of the legislature had at least a fair opportunity to follow each appropriation bill through its course, familiarizing himself with its merits, debating it intelligently, and finally passing a considered judgment upon it.

### CHAOTIC FINANCIAL LEGISLATION

However, long before the close of the last century it had become very apparent that individual members of the legislature could no longer hope to do this. The bills became too numerous and far too complicated. Yet the system continued. Ordinarily appropriation bills would be referred to committees that were concerned with the purposes for which the appropriation was to be made. This seemed to be a very sensible thing to do but it inevitably led to grave difficulties. A bill intended to appropriate money for public schools would

be referred to a committee that was concerned with schools. A bill intended to appropriate money for highway construction would be referred to a committee that was concerned with highways. And so on. Thus it would come to pass that a very considerable number of committees would have in charge numerous bills that called for large appropriations.

Each of these committees would be composed of members who were deeply concerned with a particular service and who were likely to lack not only information about other services, but, what was still more important, a proper perspective and sense of proportion. Men who were deeply interested in highways might have no appreciation of the needs of hospitals for the insane. Men who were profoundly interested in agricultural development might have no appreciation of the needs of state normal schools. Thus the system tended to focus attention upon special interests rather than upon the needs of the state as a whole. Members of the legislature would inevitably find themselves valiant champions of particular services and would battle on the floor of the legislature against other equally ardent advocates who were seeking to get the largest possible appropriation for the service in which they were especially interested. In their zeal to provide adequately for services in which they were chiefly concerned, members would be tempted to resort to the well-known practice described as logrolling, that is, the trading of votes. Those who were eager to push through an appropriation for state parks might readily vote appropriations for the state penitentiary without studying the merits of that proposal. In order to get votes for the university appropriation bill, men might agree to vote money for the state fair although they knew little or nothing about its needs. There was no one member, and no one committee, that was concerned with the needs of the state as a whole or could be expected to examine all proposals for expenditure impartially and with a view to the resources of the state and its most important needs.

All the resources of skilled parliamentarians would be brought to bear in order to push through particular appropriation measures. The individual legislator was obliged to pass hurried judgment upon isolated proposals for expenditure without having any adequate knowledge of the resources of the state, the needs of the various services, or the new proposals for expenditure that might be thrust before him the next day or the next week. Thus he would be working blindly, the victim of confusion promoted by the rivalry of discordant interests.

At the end of a legislative session a group of appropriation bills would have been passed which reflected the skill, determination, and



luck of certain legislators rather than a considered, well-balanced program of expenditures to meet all the needs of the state in proportion to its resources. Some very important services would be almost crippled because their needs were not championed by skillful advocates. Other services, much less important, would be granted far more than they really needed or deserved because some competent people had pressed their cause. And, more serious than this, appropriations would have been made without due regard for the resources of the state.

This is not an attractive picture of typical legislative procedure but it is substantially correct. Furthermore, it describes a procedure that is still followed in a large number of states. A few states have taken important steps to improve the situation but many of the evils still exist in more or less aggravated form.

This volume is not concerned with legislative procedure; it is concerned with administration. But the situation so briefly outlined here presents a problem that can be largely solved by means of improved administration. Sound administrative reorganization and the assumption of some new administrative tasks can go a long way toward improving the practice of making appropriations. Hence the problem is indeed one of administration.

A solution lies in the introduction of a good budget system. This was not done by the federal government until 1921. Sometime before that date various states had been experimenting with budget methods, but, following upon the good example of the federal government, more states and numerous cities began to work out true budget systems. Many of the systems introduced were budget systems in name only. Important features were neglected. Officials who were supposed to operate them often had no comprehension of the real purpose to be achieved, and sometimes they had no real desire to see the system work successfully. Hence many budget systems failed and fell into ill-repute and progress was slowed down. But the idea is firmly rooted and notable progress in the improvement of American state budgetary methods may be expected in future years.

### NEED FOR A BUDGET SYSTEM

It should be emphasized that it is the budget *system* that is important and not merely the budget. Merely to provide for the preparation of a document that can be called a budget is not enough. It is the steps leading up to the preparation of the budget, along with the provisions made for preserving its integrity and for executing it,

that are vitally important. All these factors taken together constitute a budget system. The budget document itself may be nothing but a monument to failure if the budget *system* is unsound.

There is no such thing as a correct budget system in the sense that other budget systems are wrong. In fact there are many different systems that are good, and there is probably not one single feature that is absolutely vital to success.<sup>1</sup> Budget systems that look bad on paper can be made to work well, and perfectly sound systems can be made to fail. Nevertheless, students of the process are pretty well agreed upon the desirability of certain procedures in connection with any budget system.

In the first place there needs to be one officer in the administrative structure who is responsible for preparing the budget. It is not a task that can be performed satisfactorily by a plural agency. There have been budget committees of the legislature. They have usually failed to put in operation a good budget system. There have been *ex officio* boards composed of chief administrative officers which have been charged with preparing a budget. They too have failed. Experience points unmistakably to the need for having the entire budget process supervised by some one person, usually known as the budget director. Sometimes elected auditors or treasurers have been designated as budget officers. To do this is to decide that the budget shall be prepared in much the same way that figures are compiled by a clerk. The function of the budget officer under such circumstances is merely that of receiving estimates from other officers, putting them all together in one document, adding to it some more data of his own on state finances, and calling it a budget. This is likely to be the case because an elected officer is not in a position to do the things which are implicit in sound budgetary procedure. And no amount of law conferring power upon him to do these things can be of much avail, for the functions are in their very nature discretionary inasmuch as they involve the exercise of judgment and opinion. Laws cannot compel men to exercise such functions effectively. This point will become clearer as the budgetary process is described.

<sup>1</sup> "If now we examine this legislation more closely four types of budget organization will appear, the first established in 1913 in Arkansas, a legislative committee; the second in 1913 in Wisconsin, a joint legislative-administrative board; the third in Louisiana in 1914, an administrative board including officials independent of the governor; and the fourth in 1915 in Minnesota and Nebraska, giving the governor full responsibility to prepare the budget for submission to the legislature, either personally or through an agency clearly responsible to him." White, *Trends in Public Administration*, p. 188.

## POSITION OF THE GOVERNOR

Authoritative opinion is overwhelmingly in favor of having the budget director appointed by the chief executive and responsible to him. So well recognized is this need that it may safely be assumed that, when any other arrangement is made, it is not the intention to have a sound budget process at all.<sup>2</sup> If the budget director is to have a fixed term, it should correspond to that of the chief executive. He should be removable by the chief executive. A better arrangement is to provide that he shall hold his position at the pleasure of the governor. In states where the constitutional term of the governor is only two years it has sometimes been argued that this is too short a term for a budget director, and in consequence he has been given a four-year or six-year term. It is very true that two years is too short a term for a budget director; the arguments are persuasive. But to guarantee him a longer term than that of the governor is to make it quite likely that he will have to serve during the administration of a governor with whom he himself is not in sympathy, and under a governor who has little confidence in him. Such a situation is certain to make it impossible to operate a sound budget system. The only alternative is for the budget director to drop into the role of an exalted clerk, and to make his function a purely routine or ministerial one. No law can save him from this fate. He holds his office for the fixed term and the essence of the system is sacrificed.

Sometimes the office of budget director is merged with that of director of a state department of finance, or with that of the office of comptroller described in the preceding chapter. There is no objection to this provided such an officer is wholly responsible to the governor. However, there should be some one highly competent person assigned to the work of budget preparation. No director of finance, nor any comptroller, with all the many other duties, can

<sup>2</sup> "Students of government are generally agreed that the governor should be vested with complete responsibility for the preparation of the budget. The people look to him for leadership, and in the shaping of the state's fiscal policy leadership is especially important. The need for gubernatorial control was not clearly recognized at first, however; seven of the first twelve budget laws placed control in the legislature, or, more commonly, in a board. But shortly afterward came a pronounced swing toward budget systems of the executive type. Most of the states that enacted budget legislation after 1915 accepted the theory of executive responsibility." Macdonald, *American State Government and Administration*, p. 335.

"... the board budget plan is losing in popularity. Not a single state has adopted it since 1921, while ten states have abandoned the board plan since 1921 in favor of the executive budget system. Only one commonwealth — Arkansas — has a so-called 'legislative' budget; here the budget is prepared by the finance committees of the two houses of the legislature." *Ibid.*, p. 336.

give to budget preparation the time and attention which the function properly requires.

The budget director should receive from all spending agencies, departments, and officers statements of the amount of money which they believe they should receive for the coming fiscal year. These statements, or requests for appropriations, are known as the "askings." The word is highly appropriate. These departments, agencies, and officers have carefully considered their needs for the coming year and officially "ask" for what they believe they ought to receive. This is the first step in the budget process. A deadline should be fixed by law for a certain date, after which the budget director may assume that the askings from the delinquent department are to be precisely what they were for the preceding fiscal year. This date should be set early enough in the calendar year that the budget director may have plenty of time to do the work he is supposed to do before the next session of the legislature opens. In states where the legislature meets early in January, the askings should certainly be filed not later than September first.

#### DEPARTMENTAL ASKINGS

These askings are the basic material with which the budget director will have to do his work. Literally, every administrative agency of the state which functions as a unit, and which expects an appropriation, large or small, should present its askings. Thus there will be huge askings from great departments like that of public welfare, and relatively small askings from officers like the adjutant general or the curator of a museum if the latter operate independent units for which separate appropriations are to be made. Obviously, in a state where sound integration of the administrative agencies has not been achieved, the budget director would have on his desk a great array of independent askings. Such a situation vastly complicates his task and may even render its satisfactory performance impossible.

Askings should be submitted on forms prepared and supplied by the budget director. Experience will dictate the character of these forms. While it is desirable that as few changes as possible should be made from year to year, nevertheless it will be found that new and better ways can be discovered for getting the askings in convenient form. The budget director's office should have authority to prescribe them. After all, it should be a minor matter to the spending agencies in what form they submit their askings; it is, however, a matter of very great importance to the budget office.

Although it is desirable that askings be submitted in considerable

detail, this practice can easily be carried much too far. Askings might be submitted in such detail that the budget director would find himself swamped in minutiae, unable, as it were, to see the forest for the trees. He should require askings to be in such degree of detail as will make it possible for him readily to discover the items which he believes are most important for the intelligent exercise of his discretion. He will discover this out of his experience.

These askings, as they come from the spending agencies, should appear in the budget document. Whatever additional material may be included in the budget, the legislative committee which ultimately will receive the budget has a right to know what the agencies themselves think they ought to have. And, besides, the spending agencies have a right to this degree of publicity. When the budget finally appears in public it should be possible for anyone to see just what was asked for, even if the budget recommendations and the final appropriations are very much lower. It is at this point that the chief difference between a good budget system and an inferior one is likely to appear. When an elected officer such as an auditor or treasurer prepares the budget, or when a budget director who is not really responsible to the chief executive does it, he is likely to do little more than compile the askings, add some other necessary data, and call the result a budget. This is what administrative officers like to have done. Many legislators like this kind of budget, too, as do influential politicians generally. But when this is done the really vital features of a good system have been ignored. To be sure, distinct improvement over the old chaotic system has been achieved when all the askings have been brought together in a single document, but nevertheless it is not a genuine budget.

With all the askings before him, the director must begin his study of them. With an eye always upon the estimated resources of the state under existing revenue laws, he must begin to pare and trim these askings. He must compare them with the sums allotted in preceding years. He must scrutinize very sharply all requests that are larger than they were the year before. Perhaps on the forms he has sent out he has provided space in which askings that are larger than the sums formerly allowed can be defended and explained. Here is an opportunity for those who are in charge of the spending agencies. Let them explain in convincing language why they need more money to carry on their work. Let the insurance commissioner make it clear why he needs two or three additional men on his staff. Let the director of public welfare explain why he believes attendants at the state penitentiary should have higher salaries. Let the university authori-

ties explain why a new building is needed. Let the state park board explain why a special allowance granted to them the preceding year should not be eliminated this year. It is the careful study of all these data that is the very essence of a budget system. If the process is not properly organized, no such study will be made and the budget system will become a perfunctory routine.

It is quite impossible that all the items in the askings should be adequately explained in a written form. Some of the items will be quite obvious. If an appropriation for a new state hospital for the insane has been requested, it would be such a big and important item that the budget director could do no more than pass it on to the legislature where final decision must be made. But there are a great many items to which he must direct his closest scrutiny. He must question, challenge, express doubts, ask for explanations, always hoping to pare the askings down without seriously impairing the activities of the spending agencies or blocking progressive development of the state's important services. But his thoughts should not be wholly upon the possibility of cutting down the askings. He should be a man of vision who will have a sympathetic appreciation of the new and better things that the administrative departments can do if their appropriations are increased. He should be truly open-minded, ask to be convinced, and not demand curtailment of activities in a defiant and captious manner.<sup>3</sup>

### BUDGET DIRECTOR'S HEARINGS

In connection with this part of his work there should be a series of hearings both private and public. Spending officers should have access to the budget director's office and he should be eager to hear them. Hence there should be many days set aside for conferences. Here again is an opportunity for those who are in charge of the various departments. They should go into conference with the budget director thoroughly prepared to explain and defend their askings, to answer his questions, and to convince him that their requests are reasonable. And they should be prepared to compromise, too, to in-

<sup>3</sup> An excellent statement of the purpose of a budget law is found in Charles G. Dawes, *The First Year of the Budget of the United States* (New York: Harper & Brothers, 1923), p. 147. It reads: "The purpose of the Budget act is to enable the President, as the responsible head of the administration of the government, to present to Congress an annual business program which shall contain the necessary information concerning the financial requirements of all the departments and establishments of the government, and the resources from which this program of expenditures may be met, in such form as clearly to indicate the application of business principles to the government's administrative activities."

sist upon essentials, and to admit that certain items may be omitted if that seems necessary. In this connection it may be pointed out that the administrative department itself has a chance to determine just where cuts in appropriations are to be made if indeed some must be made. This is infinitely better than leaving the matter to the legislature, where in the heat of political strife drastic cuts may be made more or less at random, thus leaving certain departments more than abundantly provided for in respect to certain aspects of their work and seriously crippled as regards other more important services.

Out of these hearings and discussions with the budget director satisfactory compromises and understandings can be arrived at that will make for harmony and the adjustment of conflicting interests. What an opportunity for the able administrator! Thoroughly prepared, enthusiastic and convincing, he can put his case in the best possible light. Indeed it is sometimes said that these hearings give a certain type of administrator an undue advantage. The vigorous, skillful, and persuasive advocate wins his point in the budget director's office, whereas other less aggressive though equally competent department heads fail to make such a good impression and thus suffer greater cuts in their askings. Of course there is much truth in this, but the point is hardly worth consideration. One quality of a good administrator is to be able to make others see the importance of one's service. Personality is bound to play a large part in the budget-making process, but it plays a larger and much more offensive part in the old-fashioned process of getting appropriations through the legislature.

There is no denying the fact that administrative officers are inclined to ask for more than they need or deserve, and that budget directors are unduly actuated by a determination to cut. This clash of interests is likely to be most important in the early years of a newly established budget system. And if those who occupy strategic positions are un-co-operative, narrow-minded, arrogant, and inclined to play politics, they are likely to wreck a good system before it has been firmly established. No amount of good lawmaking can save it. The impacts of personalities upon the administrative process are of tremendous significance and are often overlooked by people who think they have achieved their ends by getting a good law passed. If a budget director is unduly aggressive or narrow-minded, or if he is unduly timid and amenable, the system may be undermined and bad precedents that will persist for years to come may be established.

It is to be expected, and in one sense it is desirable, that heads of departments should be somewhat lacking in a sense of proportion. A man in charge of public welfare may be expected to have a great

enthusiasm for his work, to be able to see how he could do more and better things if his department had more money to spend, and to be thoroughly convinced that the work his department is doing transcends in importance the work that other departments are doing. His askings are sure to reflect his visions and his enthusiasms. They ought to. And it can be understood how he might be lacking in appreciation of the needs of the department of agriculture. And vice versa. Visions and great enthusiasms, if kept within reasonable bounds, are very precious attributes. A state would indeed be in a bad way if its departments were manned by people who did not have them. The specialist can rarely maintain a proper sense of proportion when his speciality is concerned, and that is no discredit to him. But, knowing this full well, budget directors are likely to be on the defensive and ready to slash on general principles. Hence it requires a rare degree of tact, good humor, patience, and sympathetic understanding on both sides to avoid an unseemly battle, extravagant and ill-considered askings followed by equally ill-considered slashings. The administrative officers begin to lose confidence in the budget director and try to go over his head to the governor or the legislature. On the other hand, the budget director takes on an air of suspicious hostility.

If this situation begins to develop, the administrative officers are likely to become hostile to the budget director and his usefulness will thus be at an end. He will need the genuine support of the governor, the legislature, and the public; and he may not get it. If a governor lets his budget director take all the abuse that may be heaped upon his head, does not come to his defense, and overrules him on important issues, the budget director is sure to retire and permit himself to become a disillusioned clerk. If the legislature gives ready ear to disgruntled administrative officers and ignores the budget recommendations, both governor and budget director will be discouraged and feel that their work has been in vain. If the public lends support to a legislature that ignores a carefully prepared budget, the whole system will collapse, no matter how good a budget law has been written onto the statute books. This has happened in many states largely because the budget system seems to many people to run counter to certain very important traditions of American government, and still more largely because the public has not yet come to appreciate the advantages of a good budget system.

#### BUDGET DIRECTOR'S RECOMMENDATIONS

The federal government is organized in such a way as to afford the budget director far more support than he gets in any of the states.



The chief factor is that the President can put very effective pressure upon the administrative department heads. Were the governor able to do this in the states, the state budget directors would fare much better. As it is, many of them are content merely to transmit askings without discussing with administrative officers the question of what measure of support their respective departments should receive.

But if the system works well, then, after the budget director has held his conferences or hearings with all the spending officers involved, he proceeds to make his own recommendations and to incorporate them into the budget. The budget director does not alter the askings which the various departments finally determine upon. In conference he may persuade them to alter their askings, but after all, it is their duty to ask, finally, for what they believe they ought to have; and these final, conclusive askings are the ones which should appear in the budget. The budget director may approve of most of these askings. If he does, that is a good sign. It usually indicates that he has done an extremely good piece of work in connection with the hearings. On the other hand, it may simply indicate weakness and complaisance on his part. At any rate it is for him to set down his recommendations in such a way that they can be readily compared with the askings. If his recommendations depart widely from the askings, certain explanatory data are needed.

Extensive arguments cannot be printed in the budget document, but there should at least be comments indicative of the reasons why the budget director does not think the department or office in question ought to get as much as it asks. Of course it is not impossible that a budget director should recommend for a department a larger sum than it has requested; but certainly such incidents are likely to be rare and would exhibit a most unusual modesty on the part of the department. In nearly every instance in which the recommendations of the budget director differ from the askings, it will appear that he has reduced the amount.

Sometimes the reductions recommended by the budget director will be uniform, that is, all the askings will have been reduced proportionately. The budget director may have concluded that in order to bring total appropriations down to a sum which can be raised under existing tax laws, a 15 per cent reduction in the total appropriations will be necessary. Therefore he reduces each of the askings by 15 per cent. This is a simple way to deal with the problem, but it is likely to indicate either weakness or indolence on the part of the budget director. It shows that he has avoided the real problem. He has abdicated as a true budget director. He might almost as well leave the

askings as they are, since his only contribution to budget-making has been to do a small problem in arithmetic. Yet this happens many times. There may indeed be justification for it. Perhaps the political situation is such that to do anything else is to invite almost certain destruction of the budget system at the hands of the legislature when next it meets. Under these circumstances, which are not unusual in the early years of a budget system, it would be better for the budget director to be discreet and to move into the background for a period of one or two legislative terms until the system is more firmly established.

The horizontal cut in askings is, on the face of it, eminently fair. All are treated alike, none are discriminated against, and the budget director's office escapes being a storm center. But it means temporary abdication nevertheless. Sometimes very powerful figures in the administrative departments are able to override the budget director with respect to their own askings. Then, in fairness to others, he takes refuge in the horizontal cut. Sometimes a governor who has his attention centered rather upon the next campaign than upon good administration will force the budget director to resort to the apparently innocuous horizontal cut. All these considerations and others similar to them explain in part the failure of budget systems at this point.

But it is just at this point that a budget system ought to be particularly strong. Having conferred at length with all the chief administrative officers as to the needs of their services, the budget director ought to retire into his office and with courage and confidence set down such recommendations as will reflect his honest judgment. This may well mean that very powerful department heads will have their askings drastically slashed while others will have theirs approved in full. It may mean that a governor who finally approves the budget recommendations will be risking the antagonism of large sections of the administrative organization and the legislature. But these political dangers must be faced if the budget system is to work as it should.

It is here, in the making of recommendations, that a good budget director, working in close harmony with his chief, the governor, should literally envisage all the activities of the state and map out a well-balanced program for the coming budget period—usually for two years. He should do just the sort of thing that a business man must do in planning his expenditures. He must decide that certain services are so important that they must be generously provided for during the coming period, while other less important services must be curtailed for the time being and obliged to wait awhile before

they can be given an opportunity to develop and expand as those in charge would like to have them do. The budget director must have the courage and intellectual honesty to say, for instance, that the state educational institutions must be content with very moderate appropriations for some two years, so that adequate hospitals for the insane may be constructed. He must have the courage to recommend that the program of the fish and game commission must be delayed for a year or two so that the newly established state police department may be adequately provided for. These various departments cannot be expected to have a full appreciation of each other's needs. It is only in one central office, the office of the budget director, that the needs of all can be dispassionately surveyed, the needs of one weighed against those of the other, and a sound, businesslike, well-balanced program worked out. It is this weighing of relative needs that will safeguard the state against embarking upon a program of ill-balanced spending that will result in pushing some services too far ahead and in crippling others. The principle involved is clearly recognized by every business man, and by anyone who plans even a household budget. It is strange that recognition of this simple principle has been so slow in coming into the field of governmental administration.

#### THE GOVERNOR MUST ASSUME LEADERSHIP

The able governor will at once recognize in budget-making a splendid opportunity for leadership. The governor who lacks vision or courage will let the opportunity pass. Any governor should see that here is a chance for him to work out a well-balanced program that is fair, reasonable, and truly progressive from the point of view of the entire state. The budget should be a document with which he can go before the legislature and the public and make a powerful and effective plea for the continuance of his administration. He should be able to consolidate public opinion behind him and to win the support of thousands who are ready to applaud a well-thought-out, just, and ably defended program. Indeed, this sort of thing must be done if good budget systems are to be established in the states. The public must come to appreciate what a budget really is and why it is important that a budget system should be preserved intact. State governors must be leaders in bringing the public to a realization of this. There is no one person to whom the budget should be as important as to the governor unless it be the ordinary citizen. It is both the governor and the private citizen who should view it as a plan for the

public welfare without vision warped by personal prejudices on the one hand and on the other undue enthusiasms growing out of a lack of perspective. Hence it is by means of the budget that the governor should most closely approach his public, and it is at the time when the budget is presented that the public should be directing closest scrutiny upon its government. It is no exaggeration to say that the budget and the processes associated with the making of it constitute the main-spring of good government.

This fact has been far more fully appreciated in countries where the parliamentary system operates than it has been in the United States. Our traditions have weighed heavily against the concentration of influence and power in the hands of one person, and this concentration is implicit in a good budget system. That is one reason why it has been so difficult to establish these systems. However, the federal budget is gradually assuming its proper role in the federal government, and notable progress has also been made in a few states. But in many states budget systems exist in name only. The public is likely to believe that when there is a budget, that is enough. The importance of the processes associated with making the budget is not generally understood.

Once the recommendations of the budget director have been incorporated in the budget, his most important task is done. And it should be clear that this task is greatly simplified if there are not too many askings and if those who submit the askings are in some degree responsible to the governor. Here is a powerful argument for sound integration of the administrative structure as discussed in Chapter II. It is hardly possible to conceive the preparation of a good budget based upon a hundred separate askings that have come from independent agencies. The complications of such a situation are obvious. Under the old prevailing system there might be a dozen different agencies engaged in activities that all related to agriculture, or to public health and welfare. If in preparing to make his recommendations, a budget director must reconcile the conflicting interests of such a group of agencies, all of which should be working in close harmony, he might well find his task too great a one to be performed intelligently. And if the heads of these numerous agencies are aggressively independent in fact and in law, he will find his task literally impossible. The budget system works best when there are only a few well-integrated departments to submit the askings, and when these departments are in some degree at least responsible to the governor. Popularly elected administrators frequently cannot be induced to co-operate with a budget director. They consider themselves more

powerful than he; this is frequently the case, and he knows it. They believe they can succeed in having his recommendations overridden on the floor of the legislature, and very often they can. Realization of this tends to paralyze the budget director, who then protects himself by abandoning his true function.

The same happens when one of the elected administrative officers assumes the role of budget director, or when the budget director is not under the control of the governor. He is tacitly snubbed and ignored if he endeavors to do the things he is supposed to do, and no law can save him from this fate. The law may plainly authorize him to make his recommendations as if he were in position to function as a true budget director, but he finds it futile to try to do so. He will soon give up all attempts and will merely go through the motions of being a budget director. Occasionally an unusually popular and able governor, aided by an unusually tactful and competent budget director, can execute a sound budget-making procedure even when they have to deal with numerous independent administrative agencies. But it is only a combination of fortuitous circumstances that will make this possible. The system is not based on a solid foundation and is quite sure to break down sooner or later.

### BALANCING THE BUDGET

By far the most attention is naturally directed upon those portions of the budget that have to do with proposed expenditures. But there is another aspect of the budget that is equally important.<sup>4</sup> It is to be supposed that the budget will balance. To balance the budget means to propose ways and means of getting revenue enough to cover all expenditures which are called for. Thus the budget director knows all the sources of revenue under existing law and he also knows what the total income for the fiscal year will probably be. Some very bad guesses may be made at this point, especially with reference to anticipated income from such sources as income and sales taxes. Nevertheless it is the duty of the budget director to make an estimate in the light of all the information he can get, and to see to it that his budget

<sup>4</sup> "A budget is, . . . essentially an information document. As such it is desirable that it should present as detailed an exposition of the revenues and expenditures of the government, past and prospective, as it is feasible to prepare. It should furnish not only information regarding the general character, purpose, and amount of government expenditures, but detailed data regarding the cost entailed in maintaining particular units of organization and in performing the particular activities itemized." Willoughby, *The Problem of a National Budget* (New York: D. Appleton-Century Company, Inc., 1918), p. 44.

balances. It is by no means essential that a budget should literally be balanced every fiscal year. The point is that the current budget should always make it perfectly clear what the condition of the state's finances will probably be if the proposed budget is adopted. Certain large expenditures should very properly be liquidated through a long period of years to come. But the budget should clearly set forth a plan for meeting them.

When the proposed expenditures substantially exceed the amounts that were appropriated for the preceding fiscal year, the budget director is under the disagreeable necessity of recommending higher rates of taxation, new taxes, or of finding new sources of revenue. This is a duty that neither budget directors, governors, nor legislators like to perform. But it must be done in the interests of sound finance. Sometimes the administrative agencies that seek increases in their allotments are called upon to let those increases hinge upon added revenues associated with their own services. Thus an increase in the appropriation for highways may be balanced by a proposed increase in automobile license taxes or in the gasoline tax. A proposed new bureau to carry on an inspection service may be cared for by fees to be levied upon those who are to undergo inspection. Thus there are many ways in which a resourceful budget director can bargain with those administrative departments that seek increased appropriations. But when increased appropriations are necessary in connection with vital services that provide virtually no revenue, such as the maintenance of penal institutions or hospitals for the insane, the budget director has no chance to bargain; he must recommend increased taxation.

This responsibility is so distasteful to some governors that they shirk it altogether and submit unbalanced budgets to the legislature. Doing this in effect leaves it to the legislature either to slash the budget allotments or to propose increased taxation. To do this is to break down the budget system, no matter how good it may seem to be on paper. The reason why governors are tempted to shirk their responsibilities at this point is clear enough. They are elective officers, and they feel that to recommend increased taxation is to jeopardize their chance of re-election. They do not care to be the victims of popular resentment against increased taxation. They do not wish to be obliged to explain and defend proposals for increased taxes. Nevertheless governors must do that if budget systems are to work. Budget systems unquestionably provide governors with new and prodigious opportunities for leadership and influence. They must be prepared to

accept the unpleasant responsibilities that go with such opportunities. Able and courageous governors will not hesitate to do so.

There is every reason to believe that the federal budget system is sufficiently well established, due largely to the courage and ability of the first budget director <sup>5</sup> and his successors, so that it is not likely to break down at this point. This is not generally true, however, in the states. There less competent men have served as budget directors, there governors have been less willing to assume leadership than have Presidents, and there the public is less interested in getting sound budget procedure established.

### BUDGET SUBMITTED TO THE LEGISLATURE

There are some able students who believe that really sound budget procedure will in the long run be impossible under the American system of government, which involves the tripartite division of powers. They believe the system can work effectively only when the chief executive, or chief administrator, is fully responsible to the legislature, as he is under the parliamentary system of government that prevails in Europe. They believe that a legislature cannot be expected to accept a budget gracefully from the hands of one whom they have not chosen and whom they cannot control, that is, whom they cannot remove. A subtle antagonism is almost sure to develop, even under the best of circumstances, whenever the governor delivers the budget to the legislature. In effect he is exercising the most important of all *legislative* functions. He is virtually introducing appropriation bills and revenue measures. Yet he is not a legislator and he cannot be held responsible for measures which the legislature finally enacts, even though he has proposed them.<sup>6</sup>

<sup>5</sup> Charles Gates Dawes.

<sup>6</sup> ". . . the formulation of the budget by the Chief Executive should be an affirmative act of the highest character. What is wanted is not a mere criticism of departmental estimates but a positive, constructive work program emanating from a responsible administrator in chief. Such a program cannot be prepared by an executive who stands, as it were, outside the administration. He must be at once, not only a part of the administration but the real directing head. Furthermore, it must be apparent that unless the executive budget goes forward as the program of the administration as a whole and not merely as one representing the opinion of an outside officer, it will fail to receive the support in the legislature that it should. That body, with considerable show of reason, will inevitably take the position that it is as competent to pass upon the estimates of the departments as is a Chief Executive having little or no administrative authority or responsibility." Willoughby, *The Problem of a National Budget*, pp. 32, 33.

" . . . The idea that the legislature is the organ which should determine how the public moneys shall be spent is so thoroughly ingrained in American political thinking

After the budget director has completed his budget he delivers it to the governor, whose duty it is to present it to the legislature. This should occur very early in the legislative session, and it is obvious that the governor should have been in office a considerable period of time before the legislature meets. In a large majority of the states this is not the case and this fact has had a disastrous effect upon state budget systems. Governors have been obliged to submit budgets that have been prepared under the direction of their predecessors. They have sometimes scarcely had time even to examine carefully the budgets they are expected to submit and defend. No wonder many of them have viewed the situation with disgust and have given only perfunctory attention to the task. It is only when a governor is able to present a budget that is truly his own that he can be expected to assume aggressive leadership in defending it. The unfortunate situation is sure to be reflected in the legislature which well knows that the governor is not submitting his own considered plan. Constitutional changes of a minor character that would change either the time of the governor's inauguration or the time for legislative sessions would remedy this defect, but such changes are slow in coming. Meantime, many governors have to make the best of bad situations.

### THE BUDGET COMMITTEE

After the budget has been introduced, with whatever message the governor may care to send along with it, the legislature may be expected to go to work upon it at once. Budgets are invariably presented to the lower house. In some states where budget methods have been introduced it has been the practice for the legislative assembly which has received it to subdivide it at once and to distribute parts of it to various committees. Thus that portion of the budget which has to do with the highway department will be given to the committee on highways, that portion which deals with educational institutions will be delivered to an appropriate committee, and so on with other clearly defined portions of the budget. A committee on appropriations may retain what is left of the budget after many large sections of it have been put in the hands of committees that are concerned with the subject matter with which the respective portions of the budget deal.

At first thought this might seem to be a proper way in which to

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that it is almost impossible for the ordinary citizen to conceive of this power being vested elsewhere. Foreign as is the idea to the American public, however, there are cogent grounds for holding that the legislature should be largely, if not wholly, excluded from the direct determination of the appropriation of funds." *Ibid.*, pp. 38, 39.



handle a budget, for under such procedure every major section of the budget is carefully scrutinized by a special committee. But in practice it is an exceedingly bad way in which to deal with a budget and has repeatedly led to the complete disruption and failure of the budget system. The reason for this is that the moment the budget is subdivided in this fashion it no longer has the character of a well-rounded program. The various committees which have portions of it in charge lack perspective. Once more, as was the case under the old method, each specialized committee studies the subject with which it is particularly concerned, not knowing what the needs of other services may be and having little appreciation of, or sense of responsibility for, the financial circumstances of the state as a whole. The very essence of the budget system lies in the fact that it provides an opportunity for maintaining at all times a comprehensive and well-balanced view of all the needs of the state, in the light of its available resources. To subdivide the budget is to destroy this unity and to invite the evils that have beset financial procedure in American legislatures for a hundred years. The various committees immediately find themselves the champions of special causes and the floor of the legislature becomes a battleground where the various administrative departments must struggle against each other for the largest appropriations they can get from a distracted legislature. The only way to avoid this is to preserve the integrity of the budget, to keep it intact, to view it as a whole at all times, and to view it at all times as a unified, well-balanced program.

All this would seem to imply that the budget should go into the hands of one committee and stay there. That is indeed the case. It should do so. But this raises some political difficulties. Such a committee at once looms up as by far the most important and influential committee in the house. Everybody wants to be on it. Members who do not get on it feel that they are having little or nothing to do with the most important business of the legislature. They lack prestige and influence and feel that they have no opportunity to participate directly in the shaping of financial legislation. Most legislators are unwilling to assume this passive role for it is not a role that has traditionally been that of American legislators.

This awkward situation cannot arise in countries which have the parliamentary system of government. Where that system is in operation, as in England and on the continent, it is the business of the ministry to present the budget and to defend it. The members of the house all assume the role of critics, to challenge, to attack, to defend, to support, to question, to explain, and finally to vote. The or-

dinary member does not expect to have a hand in the actual shaping of financial legislation. Obviously the situation has been very different in American legislatures where every member expects to participate directly in the preparation of some financial measures. The implications of sound budget procedure involve the necessity of a large number of the members retiring to the position of mere critics, content to let a small group do the all-important constructive work. Legislators do not take kindly to this.

In the face of this dilemma one solution has been to create a very large budget committee, one large enough to accommodate a good proportion of the most influential members. But of course this device does not please those who are left out and augurs ill for the success of the budget. Furthermore, the large unwieldy committee is likely to be subdivided into a number of small sub-committees, and the abuses described above begin to appear again. These circumstances are in part the reasons why some observers believe that really good budgetary procedure cannot be achieved under the American system of government. That, however, is a pessimistic view. Impressive progress has been made in Congress, and like progress can be made in the various state legislatures if the public can be brought to appreciate the need for it.

Once the budget is in committee it is the business of committee members to study the details of it intensively and to prepare for passage bills that will put it into effect. Ideally there should be just one principal budget bill embodying all the essential features of the financial program. However, the practice has been to submit a series of bills embodying the various important parts of the budget. This provides an opportunity for debate at many points and an opportunity to destroy the integrity of the budget program. It means that the budget is passed piecemeal.

#### BUDGET COMMITTEE HEARINGS

During the preparation of these several budget bills, committee hearings are conducted. The committee hearing is a very important and well-established part of legislative procedure in the United States. It has many admirable features. The committee hearing affords an opportunity for members of the committee to question publicly the government officials and any other people whom the committee members want to hear from in connection with their work. It also affords, within reasonable limits, an opportunity for proponents of a measure to plead their cause and for objectors to be heard. To a very large extent real debate on important legislative measures has been trans-

ferred from the floor of the legislature to the committee room. The sheer volume of legislative business has been a factor in bringing this to pass. It has been utterly impossible to have extended debate on the floor of the legislature on all the bills that are introduced. Committee hearings provide a way out of this *impasse* and also provide an opportunity for the ordinary citizen to make his voice heard where it will do the most good. This latter feature has not been an unmixed blessing for it has made it possible for powerful lobbyists to exert a tremendous influence in the relative obscurity of the committee room where the interests of the general public are not always adequately supported by committee members.

Furthermore, committee hearings on budget bills provide one more opportunity for department heads to plead their cause and to defeat the budget director. Indeed, so important has become the committee hearing on budget measures that capable and influential administrative officers often do not waste their time and energy trying to convince the budget officer that their askings are reasonable. They submit their askings in due form, supported by perfunctory explanations and arguments. If the budget director and the governor do not submit these askings in the final budget, the administrative officers confidently await the committee hearing and on that occasion exert all the pressure and influence of which they are capable.

This is a pernicious tendency. Having failed to convince the budget director, who has been studying the entire field and is presumably interested in working out a fair and well-rounded program, they defeat his purposes and get what they want from a committee that is subject to pressure. The ablest advocates are successful, and the less convincing administrators take the cuts. Too often it is the skillful politician who wins in the committee hearing; the competent administrator, who lacks political finesse and skill and the qualities of a persuasive advocate, is the one who loses. Those who are responsible for departmental askings have to plead their causes twice—once before the budget director and again before the committee. The second occasion is by far the more important of the two. Indeed, even if the first effort is successful and the askings are incorporated in the final budget recommendations, the battle is not yet won. The department must in all probability defend itself a second time, because the committee will usually cut the askings of those departments which are not ably defended. It is little wonder that administrative officers feel that their time is wasted with the budget director. They gird themselves for battle before the committee, where victory really counts.

There are two ways of trying to remedy this difficulty but neither

has been very successful. One method is to have present at all budget committee hearings some representative of the budget director. His specific duty is to defend the budget at every step. It could hardly be the governor himself, though he should always be ready to lend vigorous support to his own budget whenever opportunity offers. It might well be the budget director or some able member of his staff. But the tendency of American legislatures has been to resent undue pressure from the executive department in matters of legislation, and a too-active budget director might do more harm than good by trying to defend his budget too vigorously before legislative committees. He ought to be the most influential person present at committee hearings. Unfortunately he is often not even there. He is made to feel that his work is done, once the budget leaves his hands. Only the legislature itself can alter this situation. Even a law making it his duty to be present at committee hearings to defend the budget would be wholly futile if the legislative committees did not truly welcome his presence.

#### LOBBYING BY ADMINISTRATIVE OFFICERS

The other possible remedy is to impose some effective check upon administrative officers who go to committee hearings in order to support their own departments. No completely satisfactory way has yet been found to do this in the various states that have budget systems. The abuse developed very early in connection with the federal budget system, and a very effective way was soon found to put a stop to it. The President declared in blunt and unmistakable language that administrative officers would be expected to defend the items in the director's budget and not to attack them. These emphatic instructions served the purpose and the reason is not far to seek. The President has the power to remove administrative officers; hence they do well to obey his instructions on such an important matter.<sup>7</sup>

<sup>7</sup> "It has required constant effort to impress upon the minds of bureau chiefs that the budget is an expression of the will of the President, and that it is contrary to law to lobby for an appropriation greater than that presented to Congress. Both Harding and Coolidge have had to speak frankly to the Business Organization on this point.

"I regret," said President Coolidge in June, 1924, 'that there are still some officials who apparently feel that the estimates transmitted to the Bureau of the Budget are the estimates which they are authorized to advocate before Committees of the Congress. Let me say here that under the budget and accounting act the only lawful estimates are those which the Chief Executive transmits to the Congress. It is these estimates that call for your loyal support. . . . I herewith serve notice again as Chief Executive that I propose to protect the integrity of my budget.' " White, *Introduction to the Study of Public Administration*, p. 113.

Another point of view is expressed by a critic of the Federal budget system. Clarence Osborne Sherrill, City Manager of Cincinnati, Ohio, said:

"The rules of the budget bureau with reference to estimates submitted by the execu-

The governor does not have power to remove many state administrative officers except for serious cause, nor does he have any other sort of effective control over them. Hence he is quite unable to prevent them from going to various members of the legislature and to the committee hearings for the deliberate and avowed purpose of endeavoring to convince the legislators that the governor's budget recommendations are not fair to their departments. The governor is often quite unable to put a stop to this, even when he wants to do so. And he does not always want to do so. However, even if the governor has no desire to maintain the integrity of his own budget, it is nevertheless an exceedingly bad thing for the budget committee to be subjected to a barrage of criticisms of the budget emanating from administrative officers who have already had their hearings before the budget director.

Recognizing the evils of this situation and the inability of the governor to correct them, legislatures have sometimes written into the budget law a provision designed to prevent administrative officers from lobbying in behalf of their own services. Such provisions in the law are likely to be quite futile. They may prevent the bolder, more straightforward, and aggressive attacks upon the budget by dissatisfied administrative officers, but such laws cannot prevent the more subtle undercover attacks that are sure to be launched if the administrative officer believes he can do his department some good, and if he has no fear of, or sense of responsibility toward, a superior. Another reason why a mere legal prohibition upon this sort of thing is likely to be futile is that many legislators see no harm in the practice and will even encourage it in spite of the law. Many legislators are more or less jealous of the governor's prerogatives in connection with the budget and are quite willing to go over the governor's head in dealing with administrative officers.

It should be clearly understood that legislative committees should always have access to administrative departments. Administrative officers should always be in readiness to go before legislative committees when called and they should be prepared to answer questions, to give information, and to express their own best judgments upon

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tive departments are so stringent that no government officer of the executive departments is allowed to comment on the adequacies or inadequacies of the findings of the bureau. The result is that no matter how seriously the operations of any department or establishment may be affected, neither the official head of a department nor the head of any individual establishment is permitted to give publicity to the actual facts respecting the treatment which his estimates receive. Under this procedure it is very easy for the bureau of the budget to make so-called savings, which in many cases are not savings at all but simply denials of appropriations." Clarence O. Sherrill, "Czaristic Tendencies of the National Budget System," *National Municipal Review*, XV, (1926), 142.

proposed appropriations or upon any other matters affecting their departments. The abuse that needs to be rectified is the practice of administrative officers who take the initiative in the matter and as active lobbyists deliberately undertake to circumvent the provisions of the governor's budget. It is this practice which tends to demoralize administration, destroy its unity, discredit the governor, break down the integrity of the budget, and confuse the legislature.

The practice also sets in motion a vicious circle. The governor neglects to defend his budget as vigorously as he should because of political considerations such as have already been discussed. Because the governor and budget director do not concern themselves with defending the various departments, the administrative officers think it necessary to defend their own. Because they are frequently successful the governor feels still less inclined to invite defeat before a legislative committee, and thus the administrative officer is still more inclined to stand upon his own feet and plead his own cause.

Indeed it has come to pass in many states that administrative officers such as university officials, superintendents of state hospitals, directors of welfare departments, highway commissioners, and others, are conscious of a very strong sense of moral obligation to go before the legislature and to do their utmost, almost singlehanded, to preserve their departments and to maintain their services. They believe it to be one of their most important duties and they earnestly wish to perform it well. This may be to their credit but it does not make for sound budget procedure.<sup>8</sup>

Even though administrative officers quite generally rise to the occasion and rush to the aid of their departments, a great many of them do not relish the task. They find themselves embroiled in politics, victims of all sorts of political pressure, compelled to resort to practices that almost border on the dishonorable, and worst of all, perhaps, obliged to fight as rivals against fellow administrative officers in other fields. This is not a wholesome situation but it is hard to see how it can be effectively remedied until the governor acquires genuine control over all administrative activities and is then compelled to assume responsibility for a well-balanced program of administration.

<sup>8</sup> "But it is not sufficient merely that the budget should originate in the executive branch of the government rather than the legislative. The budget serves its true function only when it represents the action of the administration as a unified and integrated whole. Nor will this be accomplished by a merely nominal emanation of the budget from the Chief Executive. It must be impossible for the heads of the departments themselves directly to bring before the legislature revenue or expenditure proposals. Only as this prohibition is rigidly enforced is it possible to present a consistent and well thought-out work program." Willoughby, *The Problem of a National Budget*, p. 30.

In some states this will be a long time coming since the American tradition seems to be pretty definitely against it.

### INCREASING BUDGET ITEMS

There is another tendency which very early threatened to destroy the integrity of budgets. This was the tendency of legislatures to increase items in the budget, or to add new ones, without at the same time providing for additional revenue. Of course, to do that is to throw the budget out of balance. Students of the budget process are generally agreed that theoretically the legislature should have power to reduce items but not to increase them. Such a limitation upon the power of the legislature is very great indeed, and many lawmakers have not taken kindly to the idea. Furthermore, such a limitation greatly enhances the power and influence of the governor.

Where this limitation does apply, however, the legislature is obliged to wait until the budget has been disposed of. It then becomes possible to enact special appropriations in addition to the budget and to provide specific ways of raising money in order to meet the additional appropriations. Under these circumstances additional appropriations are not very likely to be made.

The limitation upon the powers of the legislature in the matter of increasing items may be imposed by constitutional provision or by statute. In the latter event it is, of course, merely a self-imposed limitation that may be broken down by action of the legislature itself. Nevertheless it may serve. But many advocates of sound budget procedure much prefer to have the limitation fixed in the constitution. Certainly, to do that is to strengthen the budget process enormously.

The item veto is another device for helping the governor preserve the integrity of his budget. Under this system he can veto those items in an appropriation bill of which he does not approve, without destroying the entire measure. Usually it is exceedingly difficult to get such an item restored by enacting it over the governor's veto. Thus he possesses a very powerful instrument with which to protect his budget.<sup>9</sup>

These two devices may be looked upon as alternative remedies. The item veto may be permitted without imposing a restriction upon

<sup>9</sup> "The legislature should still retain its power of rejecting or modifying the governor's budget. Since the governor retains his item-veto (which should be expanded so as to include the power of reducing items), it seems unnecessary to prohibit the legislature by constitutional provision from increasing the governor's estimates, though its power to do so might be restricted by requiring an extraordinary majority for this purpose." Mathews, "State Administrative Reorganization," *op. cit.*, pp. 390, 391.

the legislature but it places greater responsibility upon the governor. In the one case he is supported by the legal limitation upon the powers of the legislature, in the other he has an instrument with which he can defend his program.

### EXECUTING THE BUDGET

By the time a series of appropriation and revenue measures have been enacted into law, the original budget may have lost all semblance of its original character. But whether the budget has been enacted in the form of a single document, or as a series of separate measures, it must be "executed." The implication of this word is that some officer or department assumes responsibility for seeing to it that the terms of the appropriation and revenue measures are obeyed. In the past it has been nobody's duty in particular to see that the budget was faithfully executed. Indeed the phrase is scarcely applicable when appropriations are granted to a large number of separate departments which are not under any common superior. However, an officer such as a true comptroller, as he was described in the preceding chapter, can, if vested with adequate authority, execute appropriation measures in the sense that he can compel administrative departments to stay within their appropriations. But to execute a budget implies much more than this. It implies that a central department of finance, directly under the control of the governor, shall have responsibility for seeing to it that the plan of administration which is implicit in any carefully drawn budget is faithfully carried out to the extent that circumstances will permit. If unexpected needs appear in connection with any of the services, if unexpected savings can be effected, or if revenues fall below expected levels, it becomes necessary for this central finance office to make the needed adjustments in the interests of fairness to the services involved and the needs of the state as a whole.

Departments of administration are under an obligation to carry on such service as was contemplated in the budget plan; they should not necessarily spend every dollar that was appropriated. Too often they consider the latter objective the dominant one. A central office, charged with executing the budget, can be constantly on the alert to effect savings, to promote efficiency, and to stimulate administrative departments to perform better service with the resources that are available. Obviously it is a function to be performed through the department of finance, and the chief responsibility for its execution would naturally rest upon the comptroller.



## CHAPTER VII

### GOVERNMENT PURCHASING

THE buying of supplies, material, and equipment, is pre-eminently a staff function of administration, as the term is being used in this work.<sup>1</sup> It is a function that is almost inescapably associated with every other administrative task. There is not an office, department, division, or bureau in the entire administrative structure from top to bottom that does not need to have some purchasing done for it, even if its requirements are no more than a handful of stationery and some postage stamps. Of course this has always been true; there is nothing new about the need for purchasing supplies and equipment. And because this is true it may seem all the more surprising that the function of government purchasing was so completely neglected for so many years. Only in contemporary times have attention and serious study been directed to the problem.<sup>2</sup> Business concerns struggled with it long before government gave it any serious attention, and for the most part private business concerns have dealt with it much more effectively than has government. The public has never grasped the importance of the problem. Comparatively few government officials have themselves grasped its importance, and some have not even wanted to deal with it in any effective way.

<sup>1</sup> "Like fiscal control and the selection and management of personnel, purchasing is a 'staff' function. It is not an end in itself, for supplies, materials, and equipment are not purchased for the sake of spending money, but to enable the 'line' departments — fire, police, health, etc. — to render their service to the citizens. The civil service commission, the finance department, the legal department, and the purchasing office, among others, do not come into direct contact with the citizens, but are established to relieve the line departments of work which is not directly connected with their primary functions. As an ancillary officer, the purchasing agent's sole concern should be to assist the heads of the line departments. By stretching the appropriation dollar to the limit of its buying power, the purchasing office thus enables the line departments to perform more service without increasing their operating budget." Russell Forbes, *Governmental Purchasing* (New York: Harper & Brothers, 1929), p. 11.

<sup>2</sup> "In 1897 Iowa established a board of control with power to supervise all purchases for the state's penal and charitable institutions, and two years later Texas adopted a somewhat similar plan. But no other state recognized the principle of central purchasing until 1910, when Oklahoma established a state board of affairs, and authorized it to buy the supplies of all state departments, boards and agencies. This was the first instance of a complete central purchasing system in state government." MacDonald, *American State Government and Administration*, p. 344.

The reasons for this are not far to seek. On first thought the matter of purchasing does not appear to be very important. Purchasing is always incidental to the chief business in hand. Typewriters are bought, incidentally, for the main purpose of writing the letters that need to be written. Coal is purchased incidentally, even when purchased by the trainload, for the purpose of heating buildings where important work is being done. Indeed, from lead pencils to snow-plows, the government buys everything incidentally for the main purpose of carrying on various important services.

### THE OLD ATTITUDE TOWARD PURCHASING

Thus it is little wonder that the incidental task of purchasing has been lost sight of in the shadows of main activities. Purchasing has been regarded as a task that anybody could perform, and as one that most people feel quite competent to perform in a satisfactory manner. Furthermore, there is probably no task in the performance of which people can be more completely unaware of their own incompetence. Most people thoroughly enjoy buying things; the pleasure is in no wise diminished when it is done with public money. The task is not onerous nor does it often seem particularly difficult to those who do it. Those who have things which they wish to sell to the government strive to make purchasing easy for those who do the buying, and in this they usually succeed admirably. Hence it is that legislatures have rarely concerned themselves with the problem, administrative officers have been content to let the matter drift, and the public has been indifferent. It has remained for students of administration to work on the problem and to devise better ways of dealing with it.

At some time or other the modern government has occasion to buy nearly every commodity that is handled in commercial intercourse; state institutions, public or private, are likely to be the biggest purchasers of commodities to be found in the entire state. The sum total of purchases made by the great army of public officials in state and local government is huge beyond the imagination of most people who have never given the matter serious thought. Reliable figures are not available though it is a safe conjecture that nearly half of all public money is used for buying things—for purchasing supplies, materials, and equipment.

How has it been done in the past? That question is easy to answer. Quite generally it has been the practice to permit each officer and department to go into the market and buy the things needed. Thus

public purchasing has been done by a veritable army of public officials. The town clerk has bought himself pencils and stationery. The sheriff has bought soap to scrub out the jail, the hospital superintendent has bought groceries, bed linen, and coal, the state treasurer has bought adding machines and ledgers, and the liquor commission has equipped its office with sumptuous furniture.

There have been, to be sure, limits of a sort upon purchasing power. State and local officers have not been entirely free to buy everything they wanted. Local governing boards, city councils, and boards of county commissioners have usually had power to approve or to disapprove the bills incurred by local officers. But this has been a very ineffective check upon unwise purchasing. An effective check upon unwise purchasing must be applied in connection with the actual purchase. The governing board may be able to limit the funds that will be available for purchasing articles, but if an officer is free to use the limited available funds in whatever way he pleases, the evils of unregulated purchasing are not going to be solved. The activities of state offices, departments, and institutions may all be restricted because of small appropriations, but if each spends unwisely or uneconomically such money as it has, all the evils of unregulated purchasing remain despite the reduction of revenue. The objective of sound purchasing is not necessarily to reduce the sums that are spent for supplies and equipment, but rather to make sure that the money is spent to the best possible advantage.

Public money cannot be spent to the best possible advantage when it is being spent individually by a great army of public officials for an enormous variety of articles. Realization of this obvious fact has led to a demand for what is known as centralized purchasing.

### THE IDEA OF CENTRALIZED PURCHASING

The implications of the phrase "centralized purchasing" are numerous, but the most significant implication is that some one office will do the purchasing for a considerable number of otherwise independent offices and departments. The idea has many applications. It may be applied to only a few administrative agencies or to a great many; it is hardly conceivable that it should be literally applied to all. It may be applied to a single commodity, to a few, or to a great many; again it is scarcely conceivable that it should be literally applied to all. Thus, to say that a state, or a county, or a city has introduced centralized purchasing is not to make the actual situation very clear and is perhaps to be very misleading indeed. Fortunately, centralized

purchasing is an administrative practice that can be introduced to a very limited extent and yet work splendidly to the extent to which it has been introduced. It can be tried out on a small scale and progress with it can be made very slowly without disadvantage. It is perfectly obvious that centralized purchasing has in fact been practiced very widely to a greater or less degree for a great many years—in fact, since long before the term was coined. But the important thing about the movement for centralized purchasing today is not that it is something new, but that it is proposed to extend it very widely and in connection with it to develop new techniques that have great promise of bringing about improvement in administration.

#### LOCATION OF A PURCHASING BUREAU

There is some difference of opinion as to whether the purchasing office should be entirely separate from every other office and department, or whether it should be made a subordinate bureau in one of the other departments.<sup>3</sup> Since the purchasing office, wherever located, is very much concerned with the budget and public finance, there is good reason to urge that it be a subordinate bureau in the department of finance.<sup>4</sup> This can prove to be a satisfactory arrangement, although the relationship between a purchasing office and the finance services proper is not of such an intimate character as to make it absolutely necessary. To have a purchasing bureau in a department of finance would be to enhance considerably the power and influence of the department and to facilitate its other work. But it is believed by some that there is such a thing as building up a department of finance to such proportions that it can exert undue control over the other, presumably co-ordinate, departments. Thus it may come to pass that the director of the finance department can become possessed of such authority as to be the administrative superior of his fellow department heads. This power and prestige is developed through the budget

<sup>3</sup> "There is no general agreement among the states as to the proper organization of the purchasing agency. Six states place control in a separate department, whose head is selected by the governor; thirteen others assign the function of purchasing to some department that has been given other duties also — usually the finance department; the remaining states that have adopted central purchasing systems rely on boards — appointive, *ex officio*, or mixed. It need scarcely be added that the board type of administration is not best suited to this kind of work." *Ibid.*, p. 345.

<sup>4</sup> "Purchasing is a staff function which should be intimately tied up with the other financial functions, preferably occupying a bureau in a central department of finance. Much of the complaint relative to 'red-tape' connected with centralized purchasing is due to the fact that the purchasing office is separated from the accounting authorities in the administrative structure." Pfiffner, *Public Administration*, pp. 328, 329.

process and the functions of the comptroller. To put into the hands of the director of the department of finance the power also to control purchasing would be to add substantially to powers that are already great.

A bureau of purchase might, on the other hand, be located in such a department as the department of public works. The justification for locating it here would be that the department of public works is likely to be one of the largest single buying agencies in the entire administrative structure, and so might also be entrusted with purchasing for other departments as well. This consideration is not a particularly compelling one. Since the power to control purchasing is pre-eminently a staff function, to be performed for all line agencies, it would not be theoretically sound or practically wise to place this comprehensive staff function in any one of the co-ordinate line agencies. The purchasing office should be looked upon as an agency through which the chief of administration, the governor, may exercise a measure of authority and influence over all the spending agencies. This argues for having the office in the department of finance or for setting it up as a separate agency under the direct control of the governor. The question will be touched upon again at the end of the chapter.

The office should be in charge of a superintendent or director appointed by the governor or by the director of the department of finance and responsible to him. His influence for good or ill is sure to be tremendous, and the governor should be in a position to control an agency that has such power to make or break an administration.

### SCOPE OF CENTRALIZED PURCHASING

It is necessary for the legislature to make clear the extent of authority to be enjoyed by a purchasing department. There is a very wide range of possibilities. Thus it has long been the practice in some states for the various offices that are housed under the roof of the state capitol building to secure their supplies and equipment through some central purchasing office, perhaps an *ex officio* board composed of certain of the principal elected administrative officials.<sup>5</sup> This is a good arrangement as far as it goes, but such purchasing is usually of rela-

<sup>5</sup> Iowa, one of the first states to introduce centralized purchasing on a limited scale, has long followed this practice. The arrangement was condemned by the Brookings Institution: "The Executive Council should be relieved of all duties in respect to purchasing, contracting, and the custody of state-owned property, its personnel, office equipment, and supplies, so far as these are used in its present purchasing function, to be transferred to the State Purchasing Department." Brookings Institution, *Report on a Survey of Administration in Iowa*, p. 475.

tively negligible volume, and an *ex officio* board is not at all likely to develop the techniques of good purchasing practice. To amount to very much, the central purchasing department must have much larger scope than this. Even to extend its area of operations to embrace all the state administrative agencies that are located in the capital city, as is sometimes done, is usually to leave out the greater volume of purchases, since many of the larger state institutions are located in other cities. Nevertheless, so far as it goes, even this limited application of the idea of centralized purchasing is a good thing.

Another method of strictly limiting the scope and usefulness of a purchasing department is to require that its services be utilized only in connection with the purchase of certain commodities. Thus, administrative departments may be permitted to buy for themselves everything that they need except printing. If the state maintains its own printing establishment, the other administrative agencies are quite likely to be required to patronize it, and thus centralization is effected with respect to this very important volume of purchases. Even when the state does not maintain its own printing plant there may be a state printing board or other such agency through which all state printing must be ordered. Coal is another commodity to which the principle of centralized purchasing may readily be applied. The purchase of automobiles and trucks, gasoline and tires, may be centralized; and there are other important commodities that may be singled out for the central purchasing office to handle exclusively.

However, this way of approaching the problem, though it may result in some impressive economies, is only toying with the idea of centralized purchasing. The proper thing to do is to set up a purchasing department adequately staffed to deal with all kinds of purchases, on the assumption that all government purchases are going to be made through this office. Then it is proper to consider the wisdom of exempting certain administrative agencies and certain commodities from the scope of its authority. Thus certain institutions, because of their remote location, or because of their size, may possibly be left alone to do their own purchasing. A large hospital, or the state university, may be equipped to do its own purchasing just as efficiently as a central purchasing office could do it. Or an agency such as a highway commission might be allowed to purchase road-building materials through its own office. A penitentiary might have its own printing establishment or furniture factory. But, in general, it should be assumed that the central office is to do practically all purchasing. Exemptions should be allowed because they are plainly desirable.

Perhaps the most obvious advantage to be derived from centralized

purchasing is the possibility of getting better prices because of buying in larger quantities. Coal can be purchased more cheaply by the carload than by the ton; so too, gasoline, tires, typewriter ribbons, and coffee can be had at better prices when large orders are placed. This familiar principle is applicable to a very large proportion of the things the state has to buy. This consideration is by no means the only reason for having centralized purchasing, even though it is a very important one. Most impressive savings can be made when the buying power of many institutions or of many offices is pooled. It is easy to be over-enthusiastic about centralized purchasing on this score, and to exaggerate the actual savings, but no one can doubt that they must be very great. Figures to prove this have been compiled many times, especially with respect to such commodities as coal and printing. But on the other hand it is also easy to overdo centralized purchasing to such an extent as to offset the money savings because of inconvenience and delay.<sup>6</sup> This is particularly true with respect to offices and institutions that are remote from the central purchasing agency, and whose requirements are relatively small. It is also true when promptness in delivery is an important consideration. Furthermore, the principle is not fully applicable to many kinds of perishable goods.

Because of these limitations upon the principle of centralized purchasing it is highly desirable that a considerable measure of discretion should be vested in those who are to operate under the system. Here lies a very difficult problem. Here also lies one reason why centralized purchasing has not been carried further in many states than it has been. The legislature is quite unable to enact a comprehensive statute that will cover all contingencies in a satisfactory manner. Experience and the exigencies of particular situations will dictate when centralized purchasing should be practiced and when it would be more sensible not to resort to it but rather to let the various offices and institutions do their own buying. Who is to exercise this discretion? Who is to speak with authority and tell the superintendent of a state hospital or the superintendent of public instruction just what things he must buy through the central agency and what things he may purchase himself?

<sup>6</sup> "Like all projects of administrative centralization, the centralization of purchasing makes necessary the construction and operation of additional machinery of correlation and coordination between the purchasing and the operating divisions, and if this becomes unduly elaborate or fails to function smoothly, the resulting loss may easily outweigh the gains of centralization.

"Just how far, in the face of these possible disadvantages, centralization of purchasing may properly be carried in any given case can of course be determined only from a thorough study of the particular conditions encountered in the organization." Arthur G. Thomas, *Principles of Government Purchasing* (New York: D. Appleton-Century Company, Inc., 1919), pp. 9, 10.

Friction on this score is certain to arise and the eternal clash between staff and line again becomes apparent. The staff agency, as always, tends to exaggerate its own importance and to assert its prerogatives in such a way as to embarrass and perhaps to impair the efficiency of the line agency which has need of the material. The line agency, on the other hand, tends to become impatient and resentful toward the purchasing office, and believes it should be allowed to do much of its own purchasing. Legislatures have usually been unwilling to allow a central purchasing office to decide these questions with authoritative finality and thus have been content to require centralized purchasing only to a limited extent, with respect to certain named commodities as described above, or with respect to a limited number of offices.

The solution of the problem lies, of course, in making both staff and line agencies—the purchasing agency and the various offices and departments—subordinate to one authority, the governor. The problem would not arise in a large business establishment, for instance, because the general manager would have full authority over the purchasing agent, and also over the various departments for which he would be doing the buying. A word from the general manager would settle the difficulties. But when the governor lacks authority, the clash between staff and line is likely to produce an intolerable situation. The line agencies complain that the purchasing office is dilatory about filling their requisitions, that they are greatly delayed in their work, and that the red tape of making requisitions greatly hinders them in doing what they are supposed to do. Furthermore, they constantly complain that materials and equipment are not of the quality or character that they want and ought to have, and that they know better how to buy for themselves than can any remote purchasing office. On the other hand, the purchasing office will retort that line agencies do not send in their requisitions long enough in advance, but that they wait until the eleventh hour and then expect immediate delivery. It is also complained that administrative officers are likely to be most unreasonable in their demands. Each is inclined to want a particular brand of commodity, a particular kind of canned fruit, a particular make of typewriter, a special kind of filing cabinet, and so on. To acquiesce in these demands is to impair very greatly the usefulness of quantity purchasing. Of course, some of the requests for a special brand or type of article are perfectly justified, but a very great many of them are not. And so the bickering continues if no one is able to speak with authority and to say what shall be done. Obviously all this argues for concentrating authority over the entire administrative structure in the hands of the governor.



## FUNCTIONS OF A PURCHASING BUREAU

One of the most important things a purchasing office would have to do would be to establish standards. This implies arriving at definite conclusions as to just what makes of typewriters and other articles of office equipment should be provided, just what qualities and brands of canned goods should be supplied to institutions, just what qualities and kinds of coal should be supplied, and so on. It will not do to play favorites among the departments. All should be treated substantially alike, in accordance with their respective needs. Whoever is in charge of the purchasing office must make a very careful survey of all the various needs, listen patiently to the statements the administrative officers have to make concerning their requirements, and finally arrive at a conclusion as to what sort of article is best suited to the various needs that appear.<sup>7</sup> Many exceptions will have to be made but there should be clear justification for them. The food requirements of a hospital for people suffering with tuberculosis would differ from those of a penitentiary; but it would not appear that the inmates of one penal institution should have far more costly food than those of another. Should the banking commissioner's office be provided with far more expensive stationery than the department of agriculture? Should the furnishings in the office of the highway commission be five times as costly as the furnishings possessed by the public utility commission? These may seem like trifling questions but they clearly indicate the ways in which public money may be squandered in the absence of authoritative standardization.

It is quite possible to make a central purchasing office very useful without giving it any authority, but the chances are against it. Under this system the central purchasing office merely executes orders from the departments that may wish to take advantage of the facilities which the office is able to afford. Thus the administrative officer orders from the purchasing office exactly what he wants, and the purchasing office does its best to buy exactly what has been requested.<sup>8</sup>

<sup>7</sup> "Centralized purchasing should therefore employ standardization in reducing the variety of commodities used by the government. If each using branch is permitted to requisition and to receive the particular brand which it prefers, centralized purchasing will result only in the placing of the same number of orders as formerly, but through a central office. Bulk orders, representing the aggregate needs of the government, are made possible only through the establishment of standards. The standard should represent as closely as possible the quality, grade, or size best adapted to general use." Forbes, *Governmental Purchasing*, p. 8.

<sup>8</sup> "Prior to the Virginia Act of 1924, the powers of the purchasing agent of that dominion probably represented the most limited and nebulous of any such administrator. The Act of 1920 stipulated that the Virginia agent's powers should be 'advisory and co-

When this is the practice, the evils of decentralized purchasing are likely to become apparent even though they cannot be remedied. In a single day several orders for a particular article may come into the purchasing office from different departments. But each department head has specified his own favorite brand or make. The purchasing officer executes the orders, though he is keenly aware of the savings that could be effected were he allowed to provide each of the departments with the same brand or make. To satisfy the predilections of the department heads he must forego the opportunity to save the state a considerable sum of money. Nevertheless, a purchasing office of this character, enjoying no authoritative control over the administrative departments, may be the only kind of centralized purchasing that it is possible to achieve. An office of this type is much better than none at all and may prove itself to be so useful that a more effective system of centralized purchasing will become possible later.

Even if the central purchasing office is to be nothing but a service agency for the other offices and departments, to be used by them or not, as they please (if, indeed, it is used at all), it can develop the approved methods of successful purchasing agencies and be in readiness to assume greater responsibilities if and when they come. Such an office would make a very careful study of markets. It would be in constant touch with business houses in every part of the country that are able to provide the things which the state needs. The office should be thoroughly well-informed at all times as to the merits and demerits of the goods offered for sale by the various business concerns. When a request comes in to provide an adding machine, or some hospital beds, or what not, the office should know exactly where to turn in order to compare the prices and qualities of these articles as offered by the various concerns which manufacture them. When coal is wanted, the central office should know what kind of coal is best suited to the furnaces in which it is to be used, where the most satisfactory quality of coal is to be found, who are the most reliable dealers, what the freight rates are, how long it takes to get delivery, and numerous other matters related to the problem. Intelligent purchasing requires attention to a great many details that never occur to the casual buyer.<sup>9</sup>

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operative only.' The state officers were 'authorized, in their discretion, to seek the aid, assistance and cooperation of the state purchasing agent in the advantageous purchase of supplies of every nature needed for their respective functions, especially to the end that, by collective purchasing, cheaper prices may be obtained.' Milton Conover, "Centralized Purchasing Agencies in State and Local Governments," *The American Political Science Review*, XIX (1925), 76.

<sup>9</sup> "For information with reference to the particular articles in the market suitable to meet each need of the organization for which he purchases, the purchasing agent must of necessity rely to a large extent on his personal experience. It is knowledge which

People who study these problems become very expert buyers. Government ought to get the benefit of the skill of such people. This is possible only through centralized purchasing. Even if the central office is so small as to be staffed by one individual, that one person can do a prodigious amount of buying in accordance with sound principles. But where the volume of work is great enough to justify having several people on the staff, certain individuals can be assigned to the work of purchasing certain classes of commodities and can become very expert with respect to them. As they become expert it becomes very difficult to impose upon them, to sell them inferior goods at high prices, to delude them as to quality and suitability of commodities, or to victimize them as inexperienced buyers are likely to be.

It may be possible to maintain a testing laboratory where competent people can analyze, examine, and test articles that are offered for sale. It is not uncommon for those who are in charge of such laboratories to learn much more about the vendor's wares than he himself knows. Under these circumstances the state is likely to get its money's worth when it buys.<sup>10</sup>

The routine of purchasing can be developed in such a way as to expedite every step in the process, although it must be said that it is easy to overdo in this connection and to introduce unnecessary formalities. Centralized purchasing is often criticized on this score. The purchasing department may become so engrossed with formalities of procedure and clerical work as to forget that the main purpose is to buy supplies at the best possible figure and to deliver them in the quickest practicable time to those who must use them. The purchasing office should always be willing to compromise in every reasonable way with the line agencies so long as the main purpose is subserved. Sometimes there is a tendency to make a fetish of centralized purchasing and to defeat the main purpose by a too-slavish adherence to elaborate routine. Part of being a good purchasing officer is to be able to compromise intelligently and yet not surrender on matters that are important.

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he picks up from a thousand sources in his daily work. This information is necessary not only as to the best item to meet each need, but also as to the possible range of choice which should be left open in seeking competition and which should be, therefore, included within the scope of a specification." Thomas, *Principles of Government Purchasing*, p. 103.

<sup>10</sup> "Most large purchasing offices employ buyers, each of whom is a specialist in a given commodity line. He becomes thoroughly acquainted with the sources of supply, with fluctuations in market prices, and with the quality required by the different using branches. Purchasing is thus professionalized. It was formerly thought that anyone could buy; it is now generally conceded that purchasing requires training and experience for satisfactory results." Forbes, *Governmental Purchasing*, pp. 7, 8.

A central purchasing agency may find it desirable to maintain a storehouse where supplies that are sure to be wanted can be stored against the day when they are needed. This makes possible the purchase of materials in large quantities and should guarantee very prompt deliveries. Experience would dictate the extent to which storage would be feasible. It is possible, of course, to overdo in this matter. It costs something to maintain a storehouse, and there are the familiar dangers of deterioration of goods and of overstocking articles that do not prove to be entirely satisfactory. Any experienced business man would have a lot of good advice to offer on this problem, and in this connection central purchasing offices should be guided by the experience of business.

Another matter in which central purchasing offices have been very useful is the checking of deliveries. One of the worst evils of decentralized purchasing has been negligence with regard to this. When administrative officers do their own purchasing they do it quite incidentally. To buy things is not their main task. Having placed an order for supplies, there is a tendency to be careless about deliveries, careless about the quantity and quality of goods delivered. Frequently it is nobody's particular business to make sure that the vendor has actually delivered just what he was supposed to deliver. Frequently his failure to do so is not discovered until long after the goods have been paid for. Rather than make a fuss about it and thus expose his own negligence, the administrative officer lets the matter go and promises himself to be more watchful next time. Unscrupulous vendors thrive on this sort of negligence, and the state suffers the loss. It should be an important part of the work of a central office to guard against this abuse.

The matter of checking on deliveries is complicated by the fact that institutions are scattered all over the state. It certainly is not feasible to have all deliveries made directly to the central purchasing office. But that office, nevertheless, should be responsible and should exercise the function through a representative who would visit institutions or be in residence there.<sup>11</sup> If deliveries were always thoroughly and

<sup>11</sup> "Private practice inclines toward making the expert inspection force a part of the auditing department, thus rendering it independent of both the general storekeeper and the purchasing agent. Whether or not this check inspection by the department of finance would be necessary, were central delivery and inspection established, is a question which appears to resolve itself in the negative. The chief need of this check inspection arises from the fact that deliveries are scattered over so many delivery points, thus giving no opportunity for ready checking up of the accuracy and honesty of inspections. It is believed that were a central inspection force established the finance department's check inspection on accepted goods would become superfluous." Thomas, *Principles of Government Purchasing*, p. 205.

accurately checked and verified in a businesslike manner, vendors would soon cease their efforts to impose upon the government and the better class of vendors would be very much pleased. Indeed, one of the advantages of centralized purchasing is said to be that it tends to attract a better class of vendor. Often reputable business houses have no interest in selling to the government because they encounter slack business methods, are continually having to bicker about errors and negligence in connection with small orders, and frequently are subjected to temptations to practice petty graft. When they can deal in large orders with a competent and businesslike central office that can be relied upon to observe the best business practices, they are much more inclined to seek to do business with the government. For the same reasons the less desirable vendors tend to seek other markets.

Central purchasing offices sometimes find it expedient to develop activities and services that are not necessarily associated with centralized purchasing. The maintenance of a printing establishment is one of these. The printing of government documents and reports is always a substantial undertaking. It means large printing contracts to private firms in case the government does not maintain its own plant. The printing of election ballots is a very large item. If the various counties are allowed to place orders for the ballots needed in their own counties the total cost of ballots will be very much greater than if the matter is handled through one office. The most casual examination of ballots used in various counties will disclose the needless extravagance often associated with these printing orders. Some counties will be provided with much larger ballots than others, although the number of names on the ballot is the same. The qualities of paper used may also vary widely. The cost for a given number of ballots may vary as much as from one to ten. To have them printed by the state, or even to order them through a central office, would mean enormous savings.

Stationery and the numerous standard forms used in local government offices could be, but usually are not, provided by a central printing establishment. If the public schools provide books for school children, there is, of course, a volume of work great enough to keep a large publishing house busy. Indeed, the savings to be effected in the field of public printing have scarcely been explored. Furthermore, there are very powerful interests that do not want them to be explored. Many a rural newspaper is kept alive by orders for city and county printing. Even when it is not a matter of economic life or death with them, influential newspapers and the politicians who depend upon them will vigorously oppose state printing. Thus the possi-

bilities in this field have not been developed. It is by no means certain that it is feasible for the state actually to maintain and operate a printing establishment, but there seems to be no valid argument against having one central office handle virtually all the printing needs of state and local government. The central office could place orders far more economically than could the great multitude of local officials.

The central purchasing office could also maintain a central garage in the capital city. Where this has been done the savings have been very impressive. It is not generally realized what a large number of automobiles are used in government service. In the absence of a central garage the officials who use the cars are usually free to have them serviced when and where they please and to turn in the bills to be paid through the usual channels. The opportunities for wastefulness, gross extravagance, and carelessness, not to mention petty graft in connection with such a practice, are sufficiently obvious. Indeed, the servicing of government cars has come to be a very difficult problem for the administration to deal with. The actual purchase of cars is ordinarily handled in a satisfactory manner but day-to-day servicing is another matter. When the drivers of official cars can stop at any service station to buy gas and oil, to have small repairs made, to get tires repaired, and even to buy tubes, tires, and other equipment, the costs mount prodigiously. If there were a central garage, all this servicing could be handled there at a minimum cost. Large business concerns that must maintain a considerable number of automobiles have long since learned how to economize in this connection. Government should do the same. Nothing but an emergency should justify the government employee in having his car serviced as though he were a private owner.

There are other problems in connection with the use of automobiles that a central purchasing department cannot be expected to cope with. They may, however, be mentioned here. There is, on the one hand, the problem of the padded mileage statement when the employee uses his own car, and, on the other, the tendency of some employees to use government cars for private purposes. The first abuse is one which the administrative officer, who is the immediate superior of the car-user, must deal with. He should scan mileage statements promptly and thoroughly and demand an explanation of claims that seem unjustified. This is a matter that is very widely neglected. Unscrupulous employees who are allowed to use their own cars on government business find it very easy to pad their mileage claims, and it is a difficult and most disagreeable task to check on them. So general is the abuse thought to be by some students of administration that they are

firmly opposed to allowing private cars to be used. Inspectors and other government employees who travel about the state in their own cars might better be obliged to use government owned cars. In that case only their claims for gasoline, oil, and emergency servicing would need to be scrutinized.

To discourage employees from using government cars for private purposes, some states require that all public cars be conspicuously labeled as government cars. No doubt this device is helpful, and there seems to be no valid objection to it. As said before, however, this is not a matter for which a central purchasing office can be responsible.

The central garage should be equipped to care for all government cars, thus avoiding the necessity for employees to keep government cars in private garages. It should be prepared to service these cars in every possible way and to provide all kinds of necessary equipment. This implies standardization, of course. The employee should not be permitted to indulge his own prejudices in the matter of choosing the kind of tires that shall be put on the car he drives, nor the make of battery that should be in it.

#### OPPOSITION TO CENTRALIZED PURCHASING

There is so much to be said in support of the principle of centralized purchasing, and there are so many useful and desirable things that a central purchasing agency can do in the interests of economy, efficiency, and good administration, that one may well wonder what important forces are opposed to it. There are several and they are formidable. In the first place, administrative officers themselves, the good ones as well as the weak ones, are likely to be cold toward centralized purchasing until they have worked under such a system, efficiently managed, and have actually seen its advantages. It is to be expected that the more important the equipment and the material are to an administrator, the more cautious he will be about permitting someone else to do his buying. An office that requires little more than typewriters, stationery, and filing cabinets is not going to have its efficiency seriously impaired even if the equipment is of poor quality. But a researcher in one of the state hospitals may find his efforts hopelessly thwarted if the delicate instruments he must use are not exactly what he needs. Thus a jealous desire to hold fast to the right to purchase equipment and material may be found to exist in proportion to the importance of such equipment in the work to be performed. But even when *material* is not very important, the good administrator naturally wants to control the purchase of it for fear that the efficiency of his office or

department will be impaired if someone else does the purchasing.

Very frequently this attitude does not grow out of any failure to understand and appreciate the advantages of centralized purchasing. It is much more likely to grow out of a fear that the central purchasing office itself will not be efficient, that incompetent people will be put in charge, and that political considerations will prevent its working as it should. To be on the safe side, the good administrator wants to do his own buying. Certainly it must be said there is good cause for this suspicion and skepticism. An inefficient purchasing office can be a thorn in the side of every administrative department that is in any way dependent upon it, and there have been many very inefficient purchasing offices.

Less worthy motives sometimes influence administrators against centralized purchasing. One who has large purchasing power enjoys a certain degree of prestige and influence of a sort that most men like to possess. There are many subtle ways of practicing bribery that shrewd salesmen know how to exploit. These practices range from mere flattery to gross corruption. Often they take the form of affording the purchaser opportunities to buy things for himself at much better terms than he could otherwise get. This kind of bribery may be very subtle indeed, and there can be no doubt that it is widely practiced. At other times the purchaser finds it possible to build up political support for himself by doing his purchasing discreetly. On a small scale this sort of thing is widely done by local officials. They spread their purchases around in such a way as to curry favor with the largest possible number of tradesmen who may be of some importance in a political way. Gasoline for county trucks may be purchased from a multitude of corner gas stations, every one of which becomes an agency of political support. Groceries for the poor may be purchased from grocers who become very helpful as election day draws near. In somewhat less obvious ways the state administrative officer also buys political support along with his supplies. This is all very sordid no doubt, but it is remarkable how easily administrative officers with substantial purchasing power can convince themselves that there is nothing wrong about it. Men who would not steal a penny or accept an open bribe nevertheless will devote much deliberate thought and attention to figuring out how best to use their purchasing power to accomplish political ends. The complacent attitude toward this practice is a formidable obstacle to centralized purchasing.

The business interests of the state, great and small, can usually be counted upon to swing their influence against centralized purchasing. Between the wayside gas station attendant or corner grocer, on the



one hand, and the owners of great coal mines, on the other, stands a veritable army of business men who deal in things which they would like to sell to the government. A huge majority of them are opposed to centralized purchasing. A few of the better class, chiefly large dealers, are in favor of it. But the vast majority know well enough that their chances of getting some of the government business are greatly enhanced if the buying is completely decentralized. Many of them will shamelessly exploit the state in a way they never would their private customers, and too often they find plenty of complacent easy victims who are not too particular about quality and price. The government is a sure-pay customer, and even the humblest dealer in things the government must buy sees his opportunity if things are purchased by a great many buyers and in small quantities. Thousands of small dealers hang like leeches upon the body politic, purveying goods of indifferent quality at the highest retail prices. They are not easily shaken off. They have much political influence in their communities. They can make it very uncomfortable for the legislator who represents their community if they discover him supporting a scheme of centralized purchasing that threatens their lucrative trade.

Eminently respectable business men's organizations are not above throwing the organized weight of their influence against proposals for centralized purchasing. Indeed, a great many perfectly honest business men firmly believe the government ought to keep its purchasing decentralized and that it should patronize local retail dealers on their own terms. They positively resent any tendency on the part of government officials to seek the best markets and to buy economically. The fact that they are taxpayers, however small, seems to convince a great many business men that the government ought to patronize them. They are cold to the argument that government officials owe it to the entire state to do public purchasing in the most economical way.

The pressure from this army of business men, their employees, friends, and relatives, is often so great as to make it impossible for a centralized purchasing office to function properly even when one is established. Many times the members of a business community surrounding a state institution such as a hospital, a reform school, or a university, will look upon that institution as their own prize customer to be exploited to the fullest extent. It is a curious thing that tax-paying business men who constantly condemn government for being inefficient and extravagant nevertheless make it impossible for government to be businesslike in those government activities most like business.

In some states laws have been enacted that are designed to compel government officials to buy from merchants located within the state. As respects some commodities such as coal or certain kinds of machinery and equipment, such a law as this may tend to create a monopoly. Except in the case of a few of the states there can be no denying that centralized purchasing tends to send the state's business outside its boundaries. Centralized purchasing means buying in large quantities. When commodities are bought in large quantities the great army of small retail dealers is likely to be eliminated from the market. Furthermore, it becomes possible to buy in large quantities most economically from wholesalers who are located in big cities outside of the state. Thus even the large dealers within the state see their big customer slipping away from them and they will do their utmost to get legislation passed that will help to keep the business at home.

However, most of these acts afford a loophole for the government official if he has the courage to take advantage of it. These statutes usually require that materials must be purchased within the state, provided quality and price are comparable. Literally interpreted, such a restriction is no restriction at all. Quality and price being comparable, the government purchaser would have no desire to purchase from dealers outside the state. The difficulty lies in the fact that statutes of this sort are often loosely interpreted by newspapers and by the public as unqualifiedly requiring that commodities be bought within the state. Then when purchases are made outside the state, because advantage can be gained in quality or price, the official who places the order is in danger of being roundly denounced in the press for violating the law. It may not be the case at all, but the political consequences of the charge may be serious. The impression gets abroad that the government purchasing officers are violating the spirit of the law, if not indeed the letter of it, and the whole practice of centralized purchasing comes in for severe criticism.

Opposition to centralized purchasing is, of course, always exerted by venal politicians who deliberately seek to practice graft in connection with government buying, and by dishonest dealers who deliberately plan to practice bribery and fraud. The opportunities are enormous if dishonest men get into office and if purchasing is decentralized. Many books deal with the subject, and the long array of scandals involving national, state, and local officials, makes a sorry chapter in the history of American politics. Centralized purchasing is no sure safeguard against corruption in government purchasing. Indeed, a central purchasing office in the hands of dishonest politicians would become an instrument for corruption that could hardly be surpassed. In

this respect, centralized purchasing as an administrative device is much like many other very desirable instrumentalities which in the hands of able and honorable men make for vast improvement in government, but in the hands of corruptionists serve to make a bad matter very much worse. There is grim irony in the fact that it is virtually impossible to grant power to do good without at the same time giving power to do evil. A centralized purchasing office has immense potentialities for either.

However, the chances seem to be overwhelmingly against the corruptionists' getting control of a properly organized state centralized purchasing agency. The corruptionist ordinarily thrives in a wholly different atmosphere. He thrives in a hundred little offices scattered about through the administrative structure where the white light of publicity does not readily penetrate. A central purchasing office in charge of highly intelligent and capable people is not a comfortable place for him.

Central purchasing offices are exceedingly vulnerable to the criticism of the business interests that have tried and failed to get government contracts, and much of this criticism contains strong intimations of favoritism and graft. While these intimations are sometimes well founded, it is far more frequently the case that mere ignorance of all the facts has led to suspicions of favoritism. The disgruntled tradesman is far more likely to add his voice to the criticisms than he is to make it clear just why he has not been able to get contracts from the purchasing office. Not only may his prices be high, or the quality of his goods be inferior, but he may be quite unable to meet other specifications involving such matters as promptness and regularity of delivery. If a purchasing office does its work well it is bound to make numerous powerful enemies, many of whom are actuated by ulterior motives, while others are merely ill-informed. Yet so powerful may they be that sometimes purchasing officers are virtually compelled to abandon policies which they know are sound in order to conciliate interests that have it in their power to put an end to centralized purchasing.

#### CENTRALIZED PURCHASING OVERDONE

There is very little difference of opinion among informed people as to the essential merits of centralized purchasing. The principles involved are applicable on all levels of government and may be practiced with advantage either to a very slight extent or on a very broad scale. But although well-informed people will agree upon the principle of centralized purchasing, there is great difference of opinion as

to how far it should be practiced. In this connection it may be worth while to recapitulate some of the points made in the first part of this chapter. Centralized purchasing should not be practiced to such an extent that the main purpose is defeated by the requirements of office routine and by the delays necessarily involved in it. It should not be practiced to such an extent as to stultify capable administrators who need specialized equipment and who are themselves best qualified to purchase it. It should not be practiced with such zeal for economy as to handicap the line agencies in doing the things they ought to do in the most efficient way. And it should not be practiced with such rigor as to make it seem that the purchasing office is dominating the whole administration. Certain things need not be handled through the central office at all, as, for instance, scientific instruments. Certain agencies, such as hospitals and penal institutions, should be allowed a great deal of latitude in making certain of their own purchases, among which are perishable foodstuffs. A certain commodity might be required in such large quantity by just one agency that it would be better to handle it not through the central office, but through the agency itself; a highway commission, for example, might handle its road-building materials. There are scores of ways in which to compromise with the basic principle of centralized purchasing. There is bound to be wide difference of opinion as to the extent to which these compromises are justified.

It is possible for a central purchasing agency to become a very effective instrument for the indirect control of administration. This is the case when the agency is vested with authority not only to do the buying but actually to pass judgment on the need for the materials and equipment that have been requisitioned. At one extreme is found the type of central purchasing office that functions merely as a convenience for administrative departments that chose to use it. In this case the purchasing officer has little discretion; he buys exactly the things he is requested to buy and in the quantity desired. He merely holds himself ready to be of service to those departments which choose to make use of his office. This is not to carry the idea of centralized purchasing very far. To go a little farther, the purchasing office may have full discretion in the matter of purchasing some things, even though they are not very numerous. But when the central purchasing office is empowered to refuse to provide things asked for on the grounds that they are not needed, or on the grounds that the department asking for supplies has been wasteful or extravagant, then it is going considerably beyond the bounds necessarily implied in the idea of centralized purchasing. Nevertheless it is precisely in this realm

that a central purchasing office may be most useful in the control of administration.

There may be two institutions of similar character, housing about the same number of people, one of which regularly calls for a great deal more food, or more coal, or more equipment than the other. Should the central purchasing office fill these orders as a matter of routine, and ignore the obvious fact that bad management, wastefulness, or perhaps graft prevails in one of them? Of two departments of comparable character, one may be constantly requiring far more office equipment than the other. Should the purchasing office be literally nothing but a purchasing office to provide what is asked for, or should it be something more than a mere purchasing office and take authoritative steps to bring about reform in the obviously wasteful department?

One of the advantages of having a centralized purchasing office is that it very soon becomes possible to uncover situations of this sort—bad conditions that might otherwise be allowed to continue indefinitely. The purchasing office will soon have records on the basis of which many illuminating comparisons can be made and much inefficiency and wastefulness disclosed. Should the purchasing office have power to act in such circumstances, in a word, to refuse to fill orders and to compel the offending department to economize?

The best answer probably is that it should not. The purchasing office should be nothing more than the term implies. It should do purchasing and should have very wide discretion as to such matters as price and quality, but it should not itself attempt to be an instrument of control over administrative departments.<sup>12</sup> Abuses of the sort described should be corrected, to be sure, but the purchasing office is not the proper agency through which to effect reforms of this character. These problems could be better dealt with through the offices of the budget director and the comptroller. The records of the purchasing

<sup>12</sup> The leading authority on this subject argues cogently for giving the purchasing office large discretion so far as the matter of purchasing is concerned: "For the most part, however, the details of purchasing procedure are contained in administrative rules and regulations rather than in statute law; accordingly, the procedure, skeletonized in the statute, is made subject to rules and regulations to be formulated and changed at will by the administrative official or body. This is a sound policy. The purchasing rules and regulations, thus subject to alteration without legislative consent, can more easily be kept in conformance with changing conditions. For example, the 1927 Oregon law, which constituted the board of control as the state purchasing agency, is less than three hundred words in length; but the act provides that 'the said board shall adopt such rules and regulations and prescribe such forms, blanks, etc., not inconsistent with law, as shall be necessary to administer the provisions of this act.'\*" Forbes, *Governmental Purchasing*, pp. 60, 61.

\* *General Laws of Oregon*, 1927, Chapter 279.

office would, of course, be available to them at all times. In the light of what these records might show, the finance officers, supported by the governor, should be able to take the necessary steps to bring about improvement.

#### PURCHASING AND THE DEPARTMENT OF FINANCE

Because the work of the purchasing office is of such importance to the finance officers, there is good reason to say that the purchasing agency should be only a bureau in the department of finance in which the budget director, the comptroller, and the purchasing agent would all be subordinates of a director of finance, who would in turn be appointed by, and responsible to, the governor. Under such an arrangement the governor would have at his disposal entirely adequate agencies through which to exercise authoritative control over all the departments of administration with a view to economy and efficiency. Although a purchasing office can be very useful when it is located in one of the departments, such as that of public works, or when it stands alone as a separate agency, the principle of sound integration is perhaps most logically fulfilled when it is made an integral part of a department of finance.

Nevertheless it is undesirable to build up one office in power and prestige further than is necessary to achieve good administration. The director of the department of finance does not need to have the bureaus of purchase and supply and personnel administration located in his own department if those services are placed directly under the control of the governor. Concentration of authority in the hands of the chief executive should guarantee effective co-operation among them all. Purchasing is a distinct, clearly defined function. If this fact can be recognized in setting up the administrative organization without impairing efficiency of operation, it should be so recognized. Therefore it is suggested that purchasing be done through a separate bureau under the direct control of the governor.

## CHAPTER VIII

### PERSONNEL ADMINISTRATION

GOVERNMENT employs an enormous number of people. This army of government employees has been growing steadily for many years and is likely to keep on growing. As the state reaches out to do more things, to embark upon new enterprises, and to do on a broader scale the things that government has always done, it will be necessary constantly to employ more people to do the work. There is no reason why one should be dismayed at the size of the army of public employees so long as they are all fully occupied in doing worth-while things. The public money spent to pay employees is well spent if the employees are engaged on sound undertakings.

However, there are some very important problems to be dealt with in connection with the recruitment and management of this great army of workers. These problems have not been very well met in the United States, but rapid progress is being made now that they have come to be more clearly understood.<sup>1</sup> They are problems of administration. What are these problems, and what suggestions can the student of administration offer toward their solution? A great deal has been written on the subject in recent years and much experimental work is being done with a view to bringing about substantial improvement.

#### THE IDEA OF PERSONNEL ADMINISTRATION

The phrase "personnel administration" is applied to the whole broad problem of managing public employees. The more familiar phrases "civil service" and "merit system" are sometimes used in such a way as to make for confused thinking about personnel administra-

<sup>1</sup> "Within the states the progress of the merit system has been relatively slow. Twelve states have enacted merit legislation, of which one (Connecticut) has returned to patronage. Within the last decade a new type of state legislation has introduced the elements of classification and pay standardization, without requiring by law selection by merit, or establishing reasonable security of tenure. The actual administration of the merit laws has varied greatly. In Massachusetts, New York, New Jersey, and Maryland the standards have been generally satisfactory; in other states much remains to be desired; in a few, hostile governors or legislatures have in effect nullified the intent of the merit legislation." Leonard D. White, "Politics and Civil Service," *Annals of the American Academy of Political and Social Science*, CLXIX (1933), 87.

tion. The entire body of public employees compose the civil service. Some sort of merit system may or may not be applied in connection with the selection and appointment of public employees. Of course there is a civil service, whether or not there is a merit system in connection with it. A merit system, usually involving a system of formal examinations, may be used in connection with selecting merely a few or all the members of the civil service. The phrase "personnel administration" includes everything that is implied in the phrase "merit system" and much more besides because ever so much more is involved in the proper management of the civil service than the administration of a system of examinations, although it is this feature of personnel administration that is likely to attract most attention. For nearly a century considerable attention has been devoted to improving merit systems in the United States. But it is only in recent years that serious thought has been devoted to other aspects of personnel administration.<sup>2</sup>

### THE OLD SPOILS SYSTEM

The recruitment of public employees has been viewed with nearly the same measure of indifference as has government purchasing. Except for a few voices crying in the wilderness, and the agitation of a few determined reformers, it has been assumed that there was no problem. It has been taken for granted that the heads of departments, the various independent officers and government officials generally, could very properly be left to employ the workers that might be needed in their respective offices and departments as they might choose. Just as these officials and department heads have in the past been left free to go into the market and buy the commodities they needed, so they have been allowed to hire the workers they wanted. The legislature would authorize a department to employ ten clerks,

<sup>2</sup> "For civil service commissions, in most jurisdictions, the new program will require a revolution in thinking, in staffs, and in procedures. The commissions will have to give up the idea of policing appointments and begin to furnish personnel service. They will have to establish themselves as part of administration, not as an outside interference. They will have to treat public service as a career ladder, not as a fixed system of pigeon-holes into which men are fitted. Their examinations must thus be geared to the career program. They must not wait for applicants, but seek them out, and test them more for their brains and promise than for a special minor skill that fits them for a special niche, where they may be placed and forgotten. All this can be accomplished on the foundations of existing civil service law by civil service commissions provided they go forward, and are not content to remain on the old basis which has come to be known as the 'civil service system' in this country. What is required now is not a negative civil service system, but a positive career service system under modern personnel administration." Commission of Inquiry on Public Service Personnel, *Better Government Personnel* (New York: McGraw-Hill Book Company, Inc., 1935), pp. 78, 79.



for instance, at salaries fixed by law. The head of the department would hire whom he pleased, except, to be sure, when he kept political considerations in mind. This came to be very important indeed. In brief, it was thought to be the duty of the legislature to determine the number of employees and their salaries; it was the prerogative of the officer in charge to do the hiring.

This simple approach to the problem was wrong in every particular and fraught with the gravest consequences. It is now not believed to be the proper function of the legislature even to fix the number of employees, as a general thing, nor to fix salaries, except in general terms. Certainly it is not wise to permit officials to employ whom they choose without any sort of restriction.

The old method led to the spoils system and all its unfortunate ramifications. People were appointed to positions in the civil service not because of their fitness to do the work expected of them but for many other reasons in no way related to the good of the service. The evils of this practice have been related at great length many times, and there can be no doubt that very grave abuses still persist despite the notable reforms that have been made in the civil service. However, the advocates of sound personnel administration are not primarily concerned with eliminating gross abuses, nor are they solely concerned with seeing to it that employees are fitted for the positions they hold, although, of course, these achievements are implicit in any sound program of personnel administration.

#### CIVIL SERVICE COMMISSIONS

If a state were to undertake to deal effectively with the matter of personnel administration, it would be necessary for the legislature to provide for a personnel agency. With this in mind, most people would doubtless think of setting up a civil service commission. Such commissions have existed in the federal government, in some states, and in numerous cities for many years. In providing for a civil service commission it is necessary to determine what its size should be, how the members should be selected, and what their qualifications should be. It is also necessary to determine whether or not the members of the commission should themselves actually administer the program, and thus function as a true commission, or simply sit as members of a lay board, with or without an executive officer to administer the program.<sup>3</sup>

<sup>3</sup> An excellent concise statement of the functions of any civil service commission is the following:

A civil service commission does not need to be large. It does not need to function as a quasi-representative body. There are no special groups in society that need to be represented on such an agency and there is no reason for providing geographical representation. On a board that would have to deal with labor problems, for instance, it would probably be desirable to provide definitely for the representation of both labor and employers, and perhaps those of different industries. No such need as this appears in organizing a civil service commission. On a highway commission, or a park board, it might possibly be desirable to provide for the representation of geographical districts, but certainly not in the case of a civil service commission. If there is any reason at all for having a plural agency to deal with personnel administration it lies in the fact that important policies will need to be decided upon and it would be better to vest such a function in a plural agency than in one officer. Also there might be some quasi-judicial functions to be performed that would indicate a plural agency instead of one officer. But even these considerations, which are not particularly weighty, would not call for a large membership. It would seem that three are enough. Certainly more than five would be too many.

As to method of selection, there are some differences of opinion that need to be considered. First thought would no doubt suggest appointment by the governor, with the principle of overlapping terms applied. But there is a special reason why some observers believe the governor should have nothing to do with selecting those who are to

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"Broadly speaking, the functions of any civil service commission are of three types, quasi-legislative, quasi-judicial, and administrative. The quasi-legislative functions include such matters as the formulation and adoption of rules and regulations which have the effect of law, the adoption of duties or occupational classification plans, that is, putting into effect and keeping effective a complete job specification and the exercise of varying degrees of responsibility with regard to the development and administration of compensation plans. The quasi-judicial functions include such matters as investigations of the operation of the law under which the civil service commission operates or of the personnel matters in general, the designation of positions to be included in the various sub-groups of the classified service, the cancellation of employment lists, the conduct of investigations and the holding of hearings in connection with the removal of employees against whom charges are brought. In connection with some of these matters, the civil service commission holds public hearings, sits as a judicial body and is given the power to subpoena witnesses, to administer oaths, to compel the production of papers, and records, and to make and enforce findings. The administrative functions include such matters as the scheduling and holding of examinations, the preparation and rating of examination papers, the conducting of personal interviews, the preparation of employment lists, the certification of eligibles, the maintaining of departmental rosters, the checking of payrolls and the handling of correspondence, the preparation of hearing rosters and the maintaining of official contacts with other departments and institutions in all personnel matters." Oliver C. Short, "The Maryland One-Man Civil Service Commission," *National Municipal Review*, XV (1926), 154.

be in charge of personnel administration. This reason is that one of the chief purposes of a personnel agency is to prevent abuses in connection with appointment to the civil service. The governor always has a very considerable appointing power whether or not he has effective administrative power, and if he were able to select the members of the personnel agency he might well be in a position to see to it that his appointing power was not seriously curtailed by means of policies which such an agency might put in force. To put the matter bluntly, the governor himself may be the principal person whose appointing power needs to be drastically curtailed by means of sound personnel administration. If he could control the personnel agency, its usefulness might be very seriously impaired in the most important thing it has to do. Therefore it is often said that a civil service commission ought to be wholly removed from the influence of the governor.

This is a point worth considering, but it hardly justifies resorting to any of the other available methods of selecting members of a civil service commission. Popular election is not a desirable method. Men should not have to conduct political campaigns in order to secure membership on such a commission. The public is in no position to judge the qualifications of candidates for such a post. And more important still, the members of such a commission ought not to be subject to the political pressure that can always be brought to bear upon elected officers. Appointment of members of a civil service commission by the legislature is an equally undesirable method, for similar reasons and also because of additional ones. Furthermore, in case the governor appoints, the possibility of abuse is not a formidable consideration. Indeed, it may be said that if an undesirable character is elected governor, the administration is going to be undermined anyway. Virtually all programs of administrative reform contemplate very great increase in the power of the governor. If it is necessary to set up formidable safeguards against serious abuses on the part of governors, reform is well-nigh impossible. The governor is the very keystone of a well-integrated administrative structure. He must have great power if the administration is to work properly. It is inevitable that programs for improvement in administration start with the assumption that the governor will be an able man of high integrity. If this assumption cannot be made, the situation is indeed hopeless. This is not to say, of course, that certain reasonable restraints upon the freedom of the governor should not be imposed. They are easily found in the case of a civil service commission. Members could be appointed by the governor with the consent of the senate. They could be appointed for

relatively long terms, and the members could go out of office one at a time, at two-year intervals. Certainly these devices are adequate safeguards against a governor's attempt to exert undue influence upon the civil service commission.

There is difference of opinion as to whether civil service commissioners should be merely laymen, that is, people who have had no particular experience or professional training in matters of personnel administration, or whether they should be persons who do have special qualifications. On the whole it would seem that special qualifications should not be required in the law providing for the commission. In the first place, it is rather difficult to set up a defensible specific requirement. It is relatively easy to fix professional standards for doctors, engineers, accountants, and lawyers. But what should be the qualifications of a civil service commissioner? About the only measure would be in terms of years of experience in personnel work, either in government service or in industry. Even such a measure would need to be rather vague, and it is doubtful whether it would serve any useful purpose. The sort of person who is wanted on a civil service commission is one who is thoroughly in sympathy with the ideas of sound personnel administration, is reasonably intelligent, and is of good character. Problems that would require experience of a semi-professional character should be dealt with by a competent person in the employ of the commission, not by the commission members themselves. Furthermore, it is altogether probable that a wise governor would see to it that at least one member of the commission was a person of at least some significant experience in matters of personnel administration. Therefore it would seem unwise to attempt to establish any precise standards of qualification applicable to members of a civil service commission.

The question as to whether or not the members of the commission should function personally as full-time administrative officers, or merely sit as a lay board, has already been partially answered. It is desirable that the commission employ an executive officer to administer the personnel program under the general direction of the commission. It is not necessary or desirable that the members of the commission be full-time administrative officers. The commission would deal with general matters of policy; their executive officer would deal with actual administration. The relationship ought to be somewhat comparable to the relationship between a board of health and a commissioner of health, or a board of education and a superintendent of schools.

## THE IDEA OF A SINGLE ADMINISTRATOR

So far it has been assumed that there ought to be a civil service commission, existing separately from all other administrative agencies. A thoroughly sound program of personnel administration can be carried through under such an arrangement, but there is also another method of dealing with the matter that ought to be explored. The argument for this other method begins with the assumption that providing personnel for the various administrative departments, that is, providing the departments with people to do the work that needs to be done, is just another staff function, though a very important one. Staff functions which have so far been considered include the keeping of records, giving legal advice, rendering certain financial services, and purchasing materials. It is not a primary function of government to hire people. Hiring people is done incidentally in furtherance of the main job. The state undertakes to build highways, to conserve health, to operate educational institutions, to maintain parks, and so on. Incidentally, behind the scenes as it were, records must be kept, accounts must be kept, legal work must be done, and commodities must be purchased. Also, workers must be hired. With a view to integrating staff functions, therefore, personnel administration should be considered as being in a category with these other important staff functions. Let there be a bureau of personnel administration in charge of a director, appointed by and fully responsible to the governor, without the interposition of senatorial approval. Let there be no civil service commission of independent character. Let the director of personnel be a subordinate of the governor in the same sense that the attorney general, the comptroller, and the purchasing agent are subordinates. Let it be assumed that human service is just as important to the chief administrator, the governor, as are legal advice, accurate records, and good materials. Let the governor have a well organized staff agency—a bureau of personnel administration—through which he can secure competent people to man the various departments, and which can incidentally do numerous other things implied in personnel administration.

These arguments are compelling. They put the matter in a somewhat new light. It is not by any means impossible to do the things that ought to be done in connection with personnel administration under the old familiar civil service commission, but the staff agency, in charge of a director, does introduce a measure of flexibility that promises much in the hands of a high-minded governor and a competent personnel director. The obvious objection is that it carries the idea of

concentrating power in the hands of the governor altogether too far. Such an agency could be an instrument of corruption and abuse that would beggar description. But if the student of government and administration is to dwell upon the opportunities for abuse that exist in high office, then he can easily conjure up the most appalling possibilities. The evil things a President of the United States might do, with the enormous powers vested in him, would stagger the imagination. The extremely significant fact is that he does not abuse his enormous power. Restraints upon abuse of power do not lie wholly, or even largely, in constitutions and statutes. They lie in the public consciousness, vague as that may seem to be. If government is going to do great things in the interests of social betterment, high government officials must have great power. The most significant restraints upon abuse of power must be of a psychological character. If these are not adequate, then the activities and the usefulness of government must be very greatly curtailed.

#### SCOPE OF THE MERIT SYSTEM

Let it be supposed that a bureau of personnel administration has been set up in a state that heretofore has not maintained a civil service merit system. What are some of the things that would have to be done in order to achieve the most important purposes of good personnel management? In the first place the legislature would have to determine the scope of the bureau's operations. What government employees should be within its jurisdiction? Even the most enthusiastic advocates of good personnel administration would not argue for bringing literally all employees of the state under the central bureau. This function is somewhat like government purchasing in that it can be exercised to a limited extent with some success. A mere half dozen offices may be embraced within a program of centralized purchasing, or, on the other hand, all the agencies of state and local administration may be included. Just so, the principles of personnel administration may be applied to the clerks in just one office, or to nearly all government employees. However, there is this difference: to apply the principles of personnel administration to just one group of employees, or to only a few groups, is very often to create bad feeling. Employees doing similar work are then not being treated alike, and on the other hand the administrative chiefs who are subject to the personnel bureau are inclined to resent the freedom enjoyed by their colleagues whose departments are not subject to it. Thus it is not well to attempt

centralized personnel administration unless a considerable number of employees are to be brought within the scope of the project.

The federal government has dealt with this problem by gradually expanding the scope of the civil service commission. It has been assumed that employees are not to be under the civil service merit system until Congress has declared that they should be. To a certain extent the President has been authorized to bring certain categories of employees under the system if he wishes to do so. But the result is that very large groups of employees are still outside the system and will remain there until a reluctant Congress can be stimulated into extending the service to embrace them. It is suggested that it would be much better for states to approach the problem from the other direction. Thus, let a comprehensive act embrace all employees except those who are specifically exempted. No group should be exempted without convincing reasons. Such an approach is to put the emphasis where it really belongs, that is, definitely on the inclusion of all employees in the system. To approach the problem from the other angle is likely to mean that progress will be very slow. There is an inertia that always tends to hold a legislature back. Probably this is a good thing on the whole, but as regards sound personnel administration let this inertia operate so as to maintain the integrity of the system rather than to impede its development.

It has been said that no one would wish to include literally all employees in the system. What groups should be exempt? It is generally conceded that employees whom members of the legislature themselves appoint should be exempt from the system. It is rather difficult to defend this except on the very practical ground that no legislature is likely to give up this patronage. Thus personal secretaries, pages in the legislative chambers, and other employees who are appointed by the legislators and serve them, are invariably exempt. They do not constitute a very large group.

Members of the military establishment are also exempt. They, of course, are not to be looked upon as civil employees. Those who serve administrative officers in a personal or confidential manner, such as private secretaries, may also be exempt but their number should be kept down. All stenographers in a department head's office should not be looked upon as private secretaries. It is sometimes argued that employees who must possess high professional qualifications, such as doctors and attorneys, should be exempt. There was some point to this when personnel administration meant nothing more than a merit system involving routine written examinations. Experienced and com-

petent people of high professional attainments are not inclined to take kindly to written examinations. To require that they take such examinations in order to get into the service might well mean that highly competent people would not enter the service; only those who had been unsuccessful in private practice would apply and thus the main purpose would be defeated. However, the modern idea of personnel administration takes care of that difficulty. Besides written examinations there are various ways of determining fitness for a high professional post. Candidates for a position as legal adviser or as resident physician in a hospital could be required to submit evidence of their fitness in ways that would not impinge upon their self-respect or impair their professional standing. To devise such ways would be one of the tasks of a bureau of personnel administration. Perhaps a few of the higher positions might be exempt, but they should be very few.

Members of the faculties of the educational institutions are always exempt. It is to be supposed that those who are in charge of these institutions can be relied upon to apply adequate methods of determining fitness that are superior to any devices that could possibly be developed by a central personnel agency.

At the other end of the scale will be found a large number of employees who may be classified as ordinary laborers, janitors, and others who do manual work of one sort or another. It is often assumed that this group may be exempt. Again it can be said that ideas are changing. There is scarcely any occupation so humble that certain minimum standards of fitness cannot be prescribed for it. So long as the merit system involved only the writing of examinations of a somewhat academic character, it seemed pointless to require laborers to qualify in this way. But modern personnel agencies have developed thoroughly sound methods of measuring the abilities of people who seek these jobs and there is no good reason why all such humble positions should not be embraced by the system. Indeed, to leave them out is to leave open a very large number of jobs which are often filled by the worst sort of incompetent loafers possessed not only of low intelligence and small ability but also of an exceedingly meager sense of responsibility and obligation. It should be one of the important functions of a personnel agency to raise the level of competence of this group very materially. It can be done and it should be done.

As a matter of fact, the more scrutiny that comes to be directed upon positions in the civil service, the fewer of them will appear to deserve being left outside the scope of a central personnel agency. This is true largely because resourceful students of the problem are continually



finding new and thoroughly satisfactory methods of measuring ability and fitness. To many people a merit system means nothing but written examinations. The phrase "personnel administration" can and should mean ever so much more.

No attempt is being made here to mention all positions that should be exempt. The purpose has been to assert the proposition that the assumption should be that all are to be included, and that very good reasons should be advanced if any are to be exempted. The personnel agency itself no doubt would discover positions that might be exempt and would deal with them accordingly.

The good results to be achieved by bringing the vast majority of civil service employees within the scope of a central agency are so obvious and so generally recognized as to call for no extended discussion. First and foremost it would presumably guarantee, within reasonable limits, that people would not be appointed to positions unless they were at least fairly well qualified to fill them. Government jobs have notoriously been filled by incompetent people who are interested more in politics than in the work they are supposed to do. Idleness and inefficiency have been the bane of government service. Those who have power to make appointments are besieged by job hunters, a great many of whom are thoroughly incompetent. Even when appointing officials have been genuinely desirous of making good appointments they have been at a loss to know how to determine the fitness of those who besiege them for appointment. It is no simple matter to determine the real qualifications of an applicant. The appointing official is rarely in position to do so. And when he has no desire to do so, but wishes rather to pay political debts, to appoint his friends and supporters, and to build up his own political support, the service is certain to suffer.

Superintendents of hospitals and penal institutions are often virtually compelled to appoint to jobs in their institutions persons whom they know full well to be incompetent. Superior authorities will often compel superintendents to take on janitors, orderlies, guards, and other such workers who sometimes prove to be almost worse than useless. They undermine the morale of the institution and drag the level of efficiency down to a very low point. The army of workers in the employ of a highway commission or a department of public works may be filled up with loafers who chiefly seek to support the political ambitions of those who secure their appointment. Members of the legislature are themselves not above putting shameful pressure upon those who are supposed to make the actual appointments by conveying thinly veiled threats of reducing appropriations unless their po-

litical followers are provided with jobs. In one sense it may be said that high-minded officials who have power to make appointments need to be protected against the exercise of their own power. To refuse to submit to pressure from above ordering appointments they know ought not to be made may result in the loss of their own positions or in the serious curtailment of the work their departments were created to perform.

Party politics can be seen at its worst in this connection. The elected state auditor of a mid-western state recently complained in a somewhat naïve public statement that his party organization not only compelled him to appoint incompetent men to his staff, but constantly remonstrated with him when any of his men discovered bad conditions in the county offices that were manned by members of his own party. The only thing unusual about this case was that the auditor permitted his complaints to find their way into the public press. The ramifications of such pressure are most elaborate, and reach into thousands of positions, sometimes in a subtle way, sometimes in crude and brazen fashion. When they penetrate into the accounting services and into the various inspectional services, as well as into the ranks of manual laborers, the consequences are very serious. Centralized personnel administration ought to remedy most of these abuses since it would protect appointing officers against themselves, or at least render it very difficult to make political appointments. This would tend to break up the besieging army of job hunters. Not only would centralized personnel administration put an end to many of these abuses, and incidentally guarantee that persons appointed to positions were reasonably well qualified to occupy them, but it would also tend to make the public service far more attractive to desirable people than it now is.

One of the chief objectives of a centralized personnel administration would be to guarantee reasonable security of tenure. It has long been recognized that one of the most demoralizing features of the public service has been the realization on the part of many employees that, no matter how well they do their work, their positions are not secure. They know that if their administrative superiors are not re-elected to office, they themselves will in all probability be turned out of their jobs to make room for the political supporters of those who win the election.

The evil results of this situation are impossible to measure. They are certainly very great. In general, the situation has two very bad effects upon the employee: (1) knowing that faithfulness and efficiency are no protection against dismissal, he is naturally not stimulated to do his best work, and he acquires a cynical attitude toward the

service; (2) he is constantly actuated by political motives and is under constant temptation to do things, or not to do them, with the political fortunes of his chief in mind. Such influences are very bad indeed. The government employee should be actuated by the wholesome forces which operate in the best type of private business institutions. Chief of these wholesome forces is a confident realization that good work and faithful attention to the best interests of his employer mean security of tenure and promotion. To substitute this feeling for that of cynicism, apprehension, and general futility, is one of the objectives of centralized personnel administration.

Indeed, these objectives may be summarized as primarily three in number: (1) to guarantee, within reasonable limits, that people who are appointed to positions are qualified to hold them; (2) to eliminate so far as possible the political abuses connected with appointment to positions in the civil service; (3) to guarantee, within reasonable limits, security of tenure and desirable conditions of employment. The remainder of this chapter deals with ways to achieve these ends.

#### CLASSIFICATION OF THE SERVICE

One of the principal tasks of a personnel office would be to classify the positions which might be brought within the system. Similar kinds of work need to be done in many different departments. The superintendent of a state hospital requires the services of a stenographer possessing the same qualifications as one working in the office of the utility commission. In a word, the state has use for a given number of stenographers possessing a certain degree of skill, but these stenographers are scattered through a great many offices and departments. After thorough investigation and consultation with administration officers the personnel agency would know just how many people of this category were needed and where they were located. An examination could be devised to test applicants for this kind of position, and an appropriate salary could be established. No doubt there ought to be more than one classification of stenographers since in some positions people of greater experience and skill are required than in others. The term "clerk" is applied to a great many positions that are not at all alike as respects either the type of work involved or the degree of skill required. The personnel agency, after thorough investigation, would establish several grades of clerks with a view to giving the term specific meaning so that it would be understood that a third-grade clerk possessed a certain degree of ability and experience as measured by a certain type of examination and would receive a stipu-

lated salary. The various offices and departments in the administrative structure would be entitled to the services of a certain number of people in this category. Thus engineers, chemists, lawyers, bookkeepers, accountants, inspectors, janitors, waiters, guards, gardeners, laborers, truck drivers, mechanics, electricians, and a great many other workers could be classified and the positions clearly defined. The requirements of each office and department could be determined. Thus the commissioner of health would have need for so many first-class typists, so many second-grade clerks, so many inspectors of a certain ability, and so on. The bureau of records would need so many statisticians, so many clerks, and so on.

To classify the civil service in this way is a huge undertaking. It cannot be done all at once or even in a short time; nor can the task of classifying positions ever be completed. Experience and constantly changing conditions will dictate changes in the classifications as time goes on. It is easy to carry the idea of classification too far. It is not necessary to put every position in a "class" just for the sake of having the classification of the service complete. There are a great many positions of which each is in a class by itself. The personnel agency must temper its own zeal with good sense and a sympathetic appreciation of the peculiar needs of the various offices and departments. Nevertheless a very great many of the ordinary, well-defined positions in any civil service could readily be classified in this way quite promptly. This should be done as soon as possible.

The purposes of classification are clear. In the first place it very greatly simplifies the work of recruitment. That is, applicants would be examined for the position of second-grade clerk, for instance, not for the position of clerk in the office of the insurance commissioner or the superintendent of public instruction. Having passed the examination for second-grade clerk, the applicant would be qualified for appointment to any one of a score of different specific positions in as many different offices and departments located perhaps in different parts of the state. Of course such an arrangement ought to be viewed as very advantageous from the point of view of the applicant. When he takes his examination he may be very desirous of getting a particular appointment in a particular office; but, even if he does not get the precise appointment that he most desires, he has established his availability for a dozen other positions of similar character. The old idea of examining applicants for specific positions not only greatly increased the work of preparing and conducting examinations but also greatly restricted the opportunities of applicants.

Another great advantage of classification is that it makes possible

the ready transfer of people in the service. A person who has qualified as a first-rate bookkeeper may be transferred to virtually any other position in the service that is so classified. Thus if it appears that one office is overstaffed and another understaffed with people in this classification, transfers can be made without dismissing competent employees and holding new examinations for people of similar qualifications. It also makes it possible to satisfy within reasonable limits the personal desires of employees and department heads as well. Quite frequently it would make for good morale and the greater contentment and satisfaction of all concerned if such shifts could be made readily.<sup>4</sup> Classification at least makes such shifts possible.

But perhaps the most obvious advantage of classification is that it makes possible the fixing of uniform standards of pay for comparable work. Ordinarily, people doing substantially similar work, even though they are employed in many different offices, ought to be receiving the same pay and be subject to the same rules concerning pay increases, hours of work, promotions, and retirement. Not to treat them alike with respect to these matters is to be unfair and is likely to promote jealousy and dissatisfaction in the service. That is bad. Legislatures ordinarily endeavor to avoid such inequalities but the matter can be dealt with far more effectively through a personnel agency, once a classification of the service has been accomplished. Indeed, classification of the service would be highly desirable even if this were the only good achieved by it.

Fixing salary scales has often been a favorite activity of many legislators. Days and weeks have been devoted to haggling over the salaries to be paid to bookkeepers, guards at the penitentiary, stenographers in the attorney general's office, clerks, and janitors. Of course

<sup>4</sup> On the other hand, the need for transfers may be minimized. "The failure to use adequate tests perhaps accounts in large measure for the numerous transfers made in many commercial organizations; the recruiting machinery is so inadequate that large numbers of mistakes are inevitable and resort is had to transfers instead of to improvement of the selective procedure. Whenever a large proportion of the new employees must be tried out in two, three, or four different kinds of work before any is found at which they are successful, that is conclusive evidence that the selective process is inadequate and that resort to transfers is not the best remedy.

"Another improper use of transfers is to get rid of an unsuitable employee by 'wishing' him on another supervising officer who is unaware of his deficiencies. . . . It sometimes happens, . . . that an employee who does poor work under one supervisor will do good work under another; if there is reason to believe that this can be brought about, the transfer is a legitimate one, provided that the supervising officer to whom the employee goes is aware of all the known facts. But when he is told that the employee is efficient and that the transfer is being made for any other reason than the actual one, the whole transaction is on a wrong basis and is likely to do more harm than good." "Transfers in the Public Service and in the Commercial World," *Public Personnel Studies*, VI (1928), 64.

salaries of the chief administrative officers and of other important functionaries ought to be fixed by law but it is obvious that a well-organized personnel agency is in much better position to fix salary scales for the rank and file of civil service employees than is the legislature. Authority to do this, within broad limits, should be conferred upon the personnel office. This would be a serious responsibility for the office to assume but nevertheless it is very desirable that it have the power with respect to the ordinary classified positions.

It should always be remembered that sound principles of administration are not to be looked upon as absolute rules. Centralized purchasing is a sound principle, but there should be many exceptions to it. Just so it is with respect to personnel administration. The personnel agency should have power, in general, to fix salaries in the classified service, but numerous exceptions would be justified. Some state institutions, such as the state university, might maintain their own personnel agency and have a separate salary schedule that would not conform in all respects to that established by the central office, due partly to special circumstances prevailing at the institution. Some departments might employ specialists of a sort not employed by any other department in the state, and thus be permitted to deal with matters involving salary and hours of work independently of the central agency. It is very important to know when it is desirable to depart from a general rule or principle and when to observe it. Failure to judge wisely in such matters has brought many a sound principle of administration into ill repute.

### EXAMINATIONS

Having classified the service it is necessary to arrange for putting a merit system into effect. A great deal of time and study must be devoted to determining how to measure the qualifications of people who wish to enter the service. The written examination is the familiar method. However, it needs to be said that the written examination method has been greatly overworked and has served to bring the merit system into ill repute and some contempt. One reason is that the written examination is not a good test of fitness for a great many positions; another is that a great many written examinations have been very poorly designed for the purpose they were intended to serve. For some positions it is relatively easy to prepare an examination. There are certain definite things a bookkeeper ought to know; a chemist should be able to answer certain very definite questions; a stenographer ought to be able to write a certain number of words

per minute. But there are a great many positions to be filled in the service that require a type of ability that cannot be so easily determined. What qualifications should be possessed by an attendant employed in a reform school? What sort of examination should be passed by one who is to serve as assistant caretaker in a state park? There is no virtue in a written examination if the examination is not intelligently adapted to measure the candidate's fitness. Stupid and senseless examinations do the cause of personnel administration enormous harm. The devising of thoroughly defensible examinations and other methods of testing fitness should be the chief concern of the personnel agency. In order to do this it is, of course, necessary to enlist the co-operation of department heads and of specialists in the various fields. Experts employed by the educational institutions can be of great aid in this connection.

In general there are two approaches to the problem. One is to undertake to determine the candidate's fitness to do the precise tasks connected with the position he is seeking. This approach is perfectly sound with respect to some positions but it does not take into account the fact that temperament, qualities of character, adaptability, general intelligence, and resourcefulness are likely to be important factors in one's qualification for any post, and in a great many positions they are by far the most important factors. Nevertheless, in so far as there has been a public opinion with respect to this matter in the United States, it has undoubtedly been in favor of this approach. Thus it has been demanded that, if candidates for positions are to be examined at all, they should be examined with a view to discovering whether or not they are able to do precisely the things for which the job calls. This very narrow view of the purpose of a merit system has had unfortunate results, chief of which is that it has imposed very severe limitations upon the scope of merit systems and has led to unwise attempts to apply examinations that cannot possibly measure the qualities that are most important.

Realization of the limitations of this approach—the attempt to measure factual information and ability to do specific things—leads many students of personnel administration to quite a different approach to the problem. They would seek to measure the candidate's level of intelligence and his general educational attainments. This approach has been developed notably in England, and it is peculiarly well adapted to a system in which the employees look upon the civil service as a permanent career. If a young man or young woman enters the civil service with a view to remaining in the employ of the government for the rest of his life, in much the same way that one

enters the fields of medicine, dentistry, law, or engineering, it makes very little difference whether or not he can do one particular task at the time he enters the service. On the other hand, his general educational attainments, his level of intelligence, his qualities of character, and his personality are of very great importance. There will be time enough after he is in the service to fit him for particular tasks, to put him at work he is best fitted to do, and to get him finally located where his potentialities can be best developed not only for his own well being but also for the good of the state.<sup>5</sup>

But this idea of the civil service does not prevail in the United States. It may prevail some day, but it is not likely to do so for many years to come. Progress in this direction is being made, and the federal civil service commission is constantly doing its utmost to bring it to pass that the federal civil service will be looked upon as an attractive lifetime career by competent young people who graduate from high schools and colleges. But the vast majority of civil service positions in the states are still looked upon as nothing but temporary jobs, decidedly precarious, and not particularly desirable. It is to be hoped that the introduction of sound personnel administration policies will tend to change this situation. Meantime the greatest stress must still be laid upon the first approach to the problem of measuring fitness—the effort to determine the candidate's ability to do the particular tasks associated with the position he seeks.

However, the two approaches to the problem are by no means mutually exclusive. Stress may well be laid upon the first, without abandoning the second. Standard intelligence tests, now recognized as valid by the general public, can be employed. Personnel administrators in private business establishments are, of course, free to try out all sorts of devices for measuring fitness. Not only is their experience of value to government personnel agencies, but they are also helping rapidly to bring the general public to an appreciation of what sound personnel management means. This is important, since it is very difficult for government to introduce new and unfamiliar methods, since popular resentment is so easily aroused.

At any rate, it should be the business of a state personnel agency

<sup>5</sup> Concerning the time it takes to discover the potentialities of an employee, Commissioner White says: “. . . we should reconsider the present futile probationary period. Instead of six months we need a probationary period of not less than full five years, for training and testing the young administrator. The training grade of the English administrative officer is at least seven years, sometimes more; the Prussian higher administrative officials, after passing a stiff entrance examination, served at least four years on probation, followed by the great state examination.” Leonard D. White, *Government Career Service* (Chicago: The University of Chicago Press, 1935), p. 49.



to study these problems, to devise better ways of determining fitness, and to introduce, as rapidly as public sentiment and the legislature will permit, new and approved methods of examining candidates.

Closely related to the matter of examinations is the question of whether the competitive principle or the pass principle shall be applied. If the competitive principle is to be applied literally, the person who gets the highest mark in the examination gets the job. One of the implications contained in the competitive system is that applicants will take examinations for specific positions; but the competitive principle need not necessarily be confined to cases of that sort. Out of a considerable number of people who might take an examination to determine their eligibility for appointment within a given category of positions, those who stand highest could be listed as eligible for appointment to specific positions that open up in that class, in the order of merit determined by the examination. Nevertheless, the competitive principle is to be associated with the older and narrower concept of the merit system which prevailed before the possibilities of classification were fully appreciated and when examinations were calculated to measure ability to do particular things. Thus, a particular job would be open, people would take an examination intended to test their ability to perform that job, the one who passed with the highest grade would get the job. That idea is simple, direct, and has a strong appeal so far as the public is concerned; but it is a bit naïve, it has serious weaknesses, and it is not in harmony with the newer concepts of a sound merit system.

One serious weakness lies in the fact that it is wholly impracticable to conduct examinations for every vacancy that occurs, when it occurs. People should take examinations to determine their eligibility for a great many specific positions that happen to belong to the same class. This means that the examination cannot deal too precisely with the details of any particular job. Furthermore, the competitive principle assumes that one who receives a grade of 87 per cent in an examination is better fitted for the job than one who gets a grade of 82 per cent. That assumption is positively unsound. Examinations and marking systems cannot be devised so as to justify any such assumption. To make the assumption is to make a fetish of examinations and grades and to overlook the indisputable fact that a few points difference in grade may have nothing whatever to do with relative ability to perform the work connected with the job. To adhere literally to the competitive principle is to take examinations altogether too seriously.

Another weakness of the competitive principle is that it leaves the administrative officer no discretion. If Mr. A gets the highest grade, the administrative officer must accept him whether he likes him or not. This is to carry the merit principle too far. To be sure, one of the chief purposes of the merit principle is to make it impossible for administrative officers to appoint whom they wish without regard to merit; but that is not to say that such officers should have no discretion whatever and must blindly accept into their offices and departments those who pass with the highest grades. Indeed, on the other hand, administrative officers ought to have as much discretion as can safely be left with them without impairing the essential principles of a merit system. If there are a dozen people available, all of whom are amply qualified to do the work, the administrative officer ought to have the privilege of making his own selection from among them. Not only does this tend to improve morale and to make for wholesome and cordial personal relationship between chief and employee, but it also definitely places some responsibility upon the administrative officer himself. If he is obliged to take whoever receives the highest grade, he has a complete excuse for himself if the appointee proves to be unsatisfactory. The competitive principle emphasizes altogether too much the interests of a certain type of applicant. His interests ought to be recognized, and of course they are recognized in any sound merit system, but, after all, the chief concern is the good of the service, and that is not subserved by slavish adherence to the competitive principle.

Sometimes this fact is recognized by modifying the competitive principle to the extent of giving the administrative officer a chance to choose from among the three highest. This is a good plan so far as it goes, but it still unduly curtails the exercise of discretion on the part of the administrative officer. There would seem to be no good reason why he should not be allowed to choose an applicant from among all those who have shown by passing the examination that they are qualified for the position. If he himself wishes to be guided by the actual grades achieved by those who took the examination, he can easily discover who made the highest grade, and he can take that person; but he should not be compelled to do so. To be sure this might mean that some people who passed with very high grades would never get jobs, and it would anger them greatly to see persons who made lower grades get the appointments. But the explanation would almost certainly lie in the fact that such persons possessed some unfortunate personal qualities or characteristics that would have nothing to do with their ability to pass examinations but might have a

great deal to do with their capacity to fit into an office or department in such a way as to promote harmony and good morale. The administrative chief should be allowed to pass judgment on such matters so far as possible.<sup>6</sup>

Therefore the simple pass principle has many distinct advantages over the competitive principle. The passing grade might well be high, but nevertheless all who pass may be presumed to be fit for appointment within a given classification. When a vacancy occurs the appointing officer could then scan the list of those available and make his own selection from that list. Nevertheless, despite the great advantages of this method, public opinion and pressure from those who seek civil service positions tend to prevent its adoption. This is due to the deep-rooted notion that citizens have some sort of *right* to jobs, that if one passes with the highest grade he has established a claim to the job that must not be denied. This view is quite understandable, but it is not defensible, and, if it is followed, it tends to make the merit system mechanistic and rigid and prevents the development of personnel administration to its best possibilities.

### THE IDEA OF CAREER SERVICE

Classification of the service and the working out of a system of examinations are the two large, dominant problems of any central personnel agency, but there are many other things for such an agency to do. It should be concerned with ways and means of making the service attractive to competent people.<sup>7</sup> To this end it should work

<sup>6</sup> "An appointing officer wants to know how a man handles himself under pressure, whether he has capacity for growth, whether he can take responsibility, whether he can work to a dead-line, whether he can stand criticism, whether he has a taste for abstract and general thought, whether he can remain silent on occasions when he might be tempted to violent speech. These aspects of character are important for administrative work; and they appear only gradually, under the pressure of events." White, *Government Career Service*, p. 52.

<sup>7</sup> "The establishment of CAREER SERVICE is, in the judgment of this Commission, the required next step in the history of American government. In the federal government, in the state governments, and in the local governments, what we now need is the transformation of the public service to a career basis. This is the method by which our various governments may draw into their services their share of the capacity and character of the man power of the nation.

"... A *career service* in government is thus a public service which is so organized and conducted as to encourage careers. A *career service system* is the aggregation of laws, organization, rules, and procedures by means of which the career service is maintained and developed." Commission of Inquiry on Public Service Personnel, *Better Government Personnel*, p. 25.

"We have never clearly recognized in this country either an administrative corps or a career service within it, although dim foreshadowings of both may be discovered. The moment has now come when it is possible and desirable to establish an administrative

out rules and regulations concerning such matters as hours of employment, vacations, sick leave, promotions, opportunities to voice complaints, and opportunities to transfer from one post to another. This last is especially important. It should not be assumed that once a person has been appointed to a particular job he is to remain there until he resigns or is dismissed. One thing that has made the public service unattractive to young people of ability and ambition has been this rigidity. It should be possible to transfer workers in the service from one position to another very readily. Especially when a vacancy occurs it should always be possible to move a suitable worker into it from another position, if it would make him happier or give him a better opportunity to develop his interests and capabilities, or if his chief would prefer to have someone else in his place. There are scores of good reasons for transferring people in the service, to the benefit of all concerned, and the personnel agency should always be alert to make these shifts when they seem desirable. Workers should have confidential relations with the central office such as would make it possible for them to let their desires for transfer be known without incurring the displeasure of their superiors. Matters of this sort, if handled adroitly, are sure to make for the good of the service.

It ought to be very easy to make transfers within a given classification since in those cases questions of qualification and salary would not arise. A more difficult problem, one that would involve questions of qualification and salary, is that of promotion within a given classification or to a higher classification.<sup>8</sup> Although it is a more difficult problem, nevertheless it is one that can and ought to be dealt with. People already in the service ought always to be considered first in making appointments to vacancies. This makes for good morale. Certainly, it tends to make the service more attractive to those who are in it if they realize that they have the widest possible opportunities for promotion to better positions in the public service. Furthermore, it is

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group along the general lines already recognized in civil services older than ours. Within this administrative corps, as well as in other classes, it is also feasible to establish a career service. It should command such respect and prestige as to attract some of the finest administrative talent and intellectual ability of each generation. We can be content with nothing less." White, *Government Career Service*, p. 1.

<sup>8</sup> "12. The system of promotion is fundamental for the maintenance of a career service; it should therefore be a first duty of personnel officers, and of general administrators as well, to develop contacts between superior officers and subordinates, to encourage training in the service, to maintain service records, and to facilitate transfers, particularly during the early stages of a man's career, so that every employee may have a chance to advance, so that men of special capacity may be discovered promptly, and so that the petrification of personnel in stagnant and forgotten places may be prevented." Commission of Inquiry on Public Service Personnel, *Better Government Personnel*, p. 6.

sound policy from the point of view of the state itself to promote to the higher positions people who have been thoroughly tried out, who have shown their ability, and have incidentally acquired a genuine interest in public service and a keen sense of loyalty.

With this in view the personnel agency should work out a system of efficiency ratings, special examinations confined to those already in the service, and other devices to facilitate the making of transfers and promotions. A thoroughly defensible efficiency-rating system is not easy to devise.<sup>9</sup> Many ill-conceived systems, sometimes based too largely upon objective measures that are easily recorded but do not mean much, and at other times upon the opinions of superiors that may reflect nothing but prejudice and snap judgments, have inspired widespread lack of confidence in efficiency-rating systems among government employees. However, the idea is perfectly sound, and the personnel agency ought to do its best to devise a system that would command the respect and confidence of the employees. A simple record of facts that would show the number of days absent, cases of tardiness, instances of leaving work early, errors made, damage to equipment, and such, would shed some light on a worker's eligibility.

<sup>9</sup> "To rate or not to rate is no longer the question. The vital thing is *how to rate* — how to rate accurately, easily, without prejudice, and without arousing antagonism. The present-day employee seems to know instinctively whether our plan for measuring him is a fair one.

"It is a matter of common knowledge that practically all our plans of service rating have failed in actual practice. Starting from scratch about five years ago, with the germ of a new idea, a type of rating system has been constructed which not only measures accurately the relative value of a group of employees, but which, above all, emphasizes the importance of individual and collective contentment, happiness, loyalty, cooperativeness, and general morale among the working forces. There is room for debate as to whether we have not gone a bit far in our attempt to mechanize human life — to convert an employee into a sort of living robot." J. B. Probst, "Substituting Precision for Guesswork in Personnel Efficiency Records," *National Municipal Review*, XX (1931), 143, 144.

"In devising service rating schemes, moreover, too little account has been taken of the limitations of rating officers; this is evidenced by such requirements as monthly ratings, ratings on a considerable number of complex items, and, perhaps most significant of all, loading upon the rating officer the requirement that he translate into one judgment expressed numerically or by letter such facts regarding each employee rated as he considers significant. The person devising the plan does not himself know what to do with these facts when they are put before him, but he expects and requires the rating officer to find some answer to this problem which he himself cannot solve." "What's Wrong with Service (Efficiency) Ratings?," *Public Personnel Studies*, VII (1929), 18, 19.

"... a completed rating scale has, to the uninitiated, an air of omnipotence. It looks so very precise and exact that there is a regrettable tendency to assume its reliability. But fallible though they be, our judgments of our fellows must always be obtained and such judgment will be greatly assisted by the provision of a carefully constructed and controlled efficiency rating system." Winifred Spielman Raphael, "The Efficiency of Efficiency Rating Systems," *Public Administration*, XI (1933), 77.

for promotion. Much more than objective data of this sort, however, ought to be at hand. The opinion of superior officers, for example, would be valuable but not conclusive evidence. Special examinations are perhaps the most reliable evidence of fitness for promotion.

### DISMISSALS

An exceedingly difficult problem that a personnel agency would be expected to deal with is that of dismissals. Indeed this is one big problem with which students of personnel administration have made little progress. One of the principal objectives of the merit system and good personnel administration has been to guarantee a reasonable degree of security of tenure to people who get their appointments through the merit system. An employee who does good work and behaves himself ought not to be in danger of losing his job either for political reasons or because his chief wants to place friends and supporters in his office or department. Fear of arbitrary dismissal positively casts a pall upon the public service. It is demoralizing in a very high degree. The best class of workers will never be attracted to the service so long as this fear exists. Because of this fact, advocates of the merit system have always been uncompromising in their insistence upon security of tenure.

However, it is quite possible to go too far with this idea. Tenure may be too secure for the good of the service. In the effort to protect worthy employees, loafers, drones, and incompetents are all too likely to be allowed to drift along indefinitely. Obviously, the problem is to make secure the position of the good worker and yet make it possible to dismiss the undesirable worker. The problem is very easy to state but it seems to be almost impossible of solution. Either the one consideration or the other is almost invariably overstressed. Thus, either security is emphasized to the extent of protecting the undesirable workers, or the devices for getting rid of undesirables are left open to abuse so that good workers are in danger of being arbitrarily dismissed.<sup>10</sup>

<sup>10</sup> "Tenure, that is, the restriction of discharge, has been supported by the public as a curb on the wholesale firing of public employees regardless of merit by a newly elected administration, because it was hoped that this curb would end the use of public positions to pay political debts, the assessment of payrolls for party funds, the enforcement of political activity on the part of public employees, and the bad effect of partisanship in administration. While these abuses have been abolished or curtailed by tenure, evidence presented before this Commission indicates that the tenure system may be and is used by spoilsmen. A tenure group of public servants may also be a political party in itself. In recent years, the most powerful force urging tenure legislation has been the public employees. In many cases, but not all, this has taken the

Many laws have been enacted with a view to solving the problem. One way of dealing with the matter is to make a list of the reasons that will justify dismissal. The employee then knows the reasons for which he may be dismissed and will conduct himself accordingly. This approach to the problem is well-nigh futile. To be sure, if an employee is guilty of intoxication during working hours, and if that offense is included in the list, he can be dismissed. The difficulty lies in the fact that only the grosser and more obvious and clearly recognized offenses can be covered in this way. It is not the gross offenses that cause difficulty. Laziness, indolence, carelessness, insubordination, and general incompetence are the reasons why it becomes desirable to dismiss people, and if they cannot readily be dismissed for these reasons, the efficiency of the service is sure to be very seriously undermined. Such reasons may easily enough be named in the law, but it is quite another matter to prove conclusively that the employee has in fact been indolent or inefficient. It is next to impossible to do this in court, and is hardly worth trying. Hence a law which would make it impossible to dismiss an employee except for specified reasons, and which afforded him an opportunity to go to court in case he were dismissed, would virtually guarantee security of tenure except in the grossest cases of clear misconduct. Even in those cases it would be hard enough to make dismissal permanent.

The alternative is to substitute an administrative agency for the courts. The administrative agency is usually the civil service commission. It might well be the director of the personnel bureau sitting as chairman together with two or four laymen appointed for the purpose. One important reason for having cases of dismissal reviewed by such a tribunal instead of by the courts is that many of the technicalities of procedure in the courts that are important in litigation over property rights and criminal matters make it next to impossible to bring out a multitude of factors that do, after all, have a distinct bearing upon the fitness of a worker for a position. An administrative tribunal, such as a commission or a board, has much greater freedom in getting at the essential merits of a case. Nevertheless, even an administrative tribunal, free from the complicated rules of procedure that bind a court, will have a hard enough time dealing with cases of removal. Often these tribunals will voluntarily take refuge in the formalities of judicial procedure and thus apply to themselves, as it

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form of the demand for tenure without any provisions whatsoever for guaranteeing the fitness of those appointed to the protected positions. . . . , this Commission regards such legislation as undesirable except as part of a general personnel system. There should be no tenure apart from qualification for tenure." Commission of Inquiry on Public Service Personnel, *Better Government Personnel*, pp. 49, 50.

were, these hampering restrictions, for this tends to minimize the need for exercising discretion and taking the responsibility for arriving at judgments through informal procedure.

The desire of administrative tribunals to conduct quasi-judicial hearings is further evidenced by the practice of allowing the employee to be represented at the hearing by an attorney. The hearing soon takes on the character of a proceeding to determine the literal truth of precise accusations, just as a court hearing might be conducted to determine the truth of the charge that a particular person had indeed committed a specific crime. The trouble is that it is not possible to prove conclusively that a man is or is not guilty of indolence, insubordination, or incompetence, by means of the procedure used to prove that he did or did not forge a check or steal a watch.

Another difficulty arising out of the formal, quasi-judicial hearing is that if the employee is exonerated and goes back to his post, then there develops a most awkward situation that may tend to make a bad matter very much worse. The obviously awkward situation is that the chief of an office is obliged to retain on his staff a person who has successfully and publicly denied some disparaging and perhaps humiliating charges preferred by the superior. Prospects for harmony are not good. The chief has been humiliated and the employee assumes an air of defiance.

Thus the formal hearing is not a satisfactory device, although it seems to be the only one available. But it should be observed that if adequate opportunities are available for moving employees to other positions in the service, a great many difficult situations can be avoided and need for a judicial hearing can be entirely eliminated. If the personnel bureau were empowered not merely to acquiesce in requests for removal from one position to another coming from the employee himself, but actually to order such removals, the way would be open to avoid the necessity of choosing between the two alternatives of dismissing the employee from the service altogether or of sending him back to the position which his chief has declared he does not fill in a satisfactory manner. This sort of compromise is of course always available to the private employer and it is also enormously helpful in maintaining good morale, efficiency, and a fair degree of security for the employee. It would seem that the state ought to enjoy similar opportunities.

#### RETIREMENT

The matter of retirement is another subject that calls for much careful study. In very few of the states has it been dealt with in a



satisfactory way. Of course an adequate pension system is the solution. This is a problem for the legislature to solve rather than a problem of administration. The administration of a pension system is a relatively simple routine task. It should be the task of the personnel bureau of course. There can be no doubt that a good retirement program or pension system would do much toward making the civil service attractive. And although the actual administration of such a system does not present complicated problems for a personnel bureau to struggle with, it should be pointed out that the introduction of a pension system is attended with considerable danger if the other aspects of personnel administration have not been dealt with properly. A pension system might well be part of a spoils system. Sound procedure in the matter of recruiting employees, classifying the service, and doing the other things implied in sound personnel administration are what make a pension system defensible. Too often pension systems have been introduced without giving adequate attention to these other things. Then the service tends to become a campground for idlers and incompetents, and the pension system comes in for severe attack. Indeed, the principal objections to pensions for civil service employees grow out of a bad opinion of the civil service based on long years of failure to deal effectively with personnel administration.

#### BUDGETING PERSONNEL

Many times in these pages it has been pointed out that it is quite possible to carry a good idea too far. It is not easy to say when this has happened, but the advocate of reform should always be on guard against the danger. In the realm of personnel administration the danger point may be reached when the personnel bureau is given power to say authoritatively how many people may be employed. A very large portion of the money spent by the state goes to pay employees. With a view to conserving resources in this connection it is desirable to make sure that too many employees are not on the payroll. Doubtless a great many government offices and departments are overstaffed. It is only natural for the heads of departments to want to have as many employees as they can get. There is always a tendency to demand more help than is really needed. Sometimes, too, legislatures will actually create more positions than are really needed or have been asked for by administrative officers. Increased efficiency and laborsaving devices tend to cut down the need for positions which the legislature may neglect to abolish. Thus it comes to pass that a disinterested survey of civil service positions in any state administrative

structure is likely to disclose the need for eliminating some positions, as well as a need for creating others. And the situation continually changes. The attorney general may have too many assistants or not enough. It is only in the latter case that he is likely to mention the matter. The highway department may be carrying many more employees than are really needed. Unnecessary clerks, typists, bookkeepers, inspectors, janitor's assistants, and other such employees may be hidden away and scattered by the score throughout the various offices and departments. On the other hand, certain offices may be seriously undermanned, due to the fact that the burden of work has gradually increased and no additional workers have been employed.

Administrative officers themselves can be relied upon to take the initiative in the latter situation and to request more help at the time of sending in the budget askings. But it is likely to be nobody's business seriously to investigate the need for eliminating positions. Here is a very important task for the personnel agency. It should be the business of the personnel bureau not only to conduct a thorough survey of the civil service with this matter in mind, but to maintain a constant watch over all branches of the service with a view to discovering whether this or that office or department is overstaffed. This is a delicate task, but it certainly needs to be performed. Just as it is important to see to it that institutions do not waste coal, use up machinery too fast, or waste food and other materials, so it is important to be sure that man power is not being squandered.

But in exercising this function the personnel office is sure to encounter determined resistance from many sources. This is only another manifestation of the constant clash between staff and line. The department of health wants more inspectors. The personnel bureau believes the department has too many already. The banking commissioner wants two additional stenographers. The personnel agency believes he does not need them. Who is to settle these problems?

In the past, legislatures have tried to deal with such matters directly. Legislative measures have explicitly prescribed the number of employees to be maintained in each branch of the service. It is hardly necessary to point out the difficulties of dealing with the matter in this way. The legislature ought not to be obliged to deal with the problem except in very general terms. To a certain extent it can be dealt with at the time of preparing the budget, but the proper way to deal with it is through a bureau of personnel administration. The danger lies in giving the bureau such power as to make it a virtual dictator over the line departments. This would be to carry a good idea too far. A solution would seem to be to allow the chief ad-

ministrator, the governor, to make final decisions on these matters of personnel in the light of information supplied by the personnel agency and the administrative officer concerned.

#### PERSONNEL AND THE DEPARTMENT OF FINANCE

There are some who believe that the bureau of personnel administration should be located in the department of finance, under the control of the director of that department. The reason for this proposal is that the number of people employed by the various departments, and the salaries paid to them, are matters of very great importance to the department of finance. But there is some danger of overemphasizing the interests of that department. Many matters connected with personnel administration have nothing whatever to do with financial matters. Furthermore, personnel administration is a distinct, clearly defined function. These facts should be recognized in the organization of an agency designed to exercise it. Therefore it is proposed that a separate bureau be established for the purpose. Since both the director of the department of finance, and the chief of the bureau of personnel administration would be appointed by the governor and accountable to him, the two agencies should be able to cooperate effectively.

## CHAPTER IX

### THE LIMITS OF CONCENTRATION

THE central theme of this work up to this point has been the need for sound integration of what have been called the staff functions of administration, and the concentration of power in the hands of the governor. The word "concentration" has been used instead of "centralization" because the latter term is ordinarily used to describe a relationship between state and local offices, or between federal and state departments of administration. Thus, to give the state governor authoritative control over state agencies, or to give the President power over federal offices, may be said to be to concentrate administrative power rather than to centralize control. The distinction of terms is purely arbitrary and is adopted merely for convenience.

Two large and very important departments have been envisaged: a department of justice, and a department of finance. It has been argued that each of these departments should be under the direction of a single officer appointed by the governor, preferably without the need of senatorial approval, to serve at the governor's pleasure. This would ordinarily be for the duration of his own term, which should be for four years. The department of justice would be in charge of the attorney general and would be divided into two distinct bureaus. One of these would be concerned with legal matters, and might be subdivided into several divisions engaged respectively in giving legal advice, handling civil litigation, prosecutions, and contacts with local county or district attorneys. No doubt the attorney general would be in personal charge of this bureau and would devote the major portion of his time to its work.

The other bureau in the department would be a bureau of state police in charge of a chief appointed by the attorney general with the approval of the governor. This bureau would be divided into divisions having to do respectively with patrol and general police work, criminal investigations, criminal records, and fire prevention.

The department of finance might be in charge of an officer known as the comptroller. It could be subdivided into bureaus having to do with financial control and pre-audit (the chief concern, no doubt, of the comptroller himself), accounting and reports, the treasury, budget

preparation, and supervision of local finance. There would also be in the department a tax commission of three members appointed by the comptroller with the approval of the governor. The auditor would not be a member of this department but would have an independent office and would be appointed by the legislature.

In addition to these two major departments there would be three bureaus under the direct control of the governor, each in charge of a bureau chief appointed by him. There would be a bureau of records, a bureau of purchase and supply, and a bureau of personnel administration, each appropriately subdivided into divisions. In the bureau of personnel administration there would need to be a board composed of the bureau chief himself and two others appointed by the governor.

These five agencies of administration—the two major departments and the three bureaus—would be the instruments through which a governor could dominate all the administrative activities of the state if he wished to do so. The offices of the two department heads and the three bureau chiefs should be in close physical proximity to the governor's office, and it should be easily possible for the governor to be in personal contact with each of them daily. He should give largely of his time and personal attention to the major problems of their departments and bureaus. He should be fully conversant with developments in these five offices and be prepared to assume responsibility for their policies and actions. This much would be humanly possible, but it is not possible for a governor to be in intimate personal touch with all the multitudinous and extensive administrative services of the modern state.

Power and responsibility should go together. It is unwise to give an officer power that is too broad for one man to exercise intelligently. It is unfair to hold him responsible for activities that are too numerous and too great for one man to assume. It is a mistake to take for granted that a chief executive can exert intelligent direct control over, or assume personal responsibility for, a large number of administrative departments having to do with public works, highways, education, public health and welfare, regulation of banks, insurance companies, conservation, agriculture, public utilities, and such. It cannot be done, and the administrative organization should not be of such a character as to imply that it can be done or even attempted. Although in the chapters which follow only eight line departments are proposed in addition to the departments of finance and justice, it should be realized that these constitute an absolute minimum. There might well be many more, depending upon conditions in a given state. The depart-

ments of education, welfare, highways and public works, public utilities, and transportation might very well be divided into two, or in some cases more, separate and distinct departments, without doing too much violence to the principle of integration. The treatment in this volume has merely carried the principle to a logical conclusion.

Usually, when it is argued that departments should be under the direction of single department heads responsible to the governor, it is urged that these chief administrators sit as members of a cabinet to consult with the governor and advise with him as to general policies.<sup>1</sup> The analogy of the President's cabinet is obvious. But notwithstanding the useful purposes which this institution may or may not have served on the national stage, a similar agency has not generally appeared in the states and there is good reason to doubt that it is needed. A secretary of agriculture, a director of public welfare, and a superintendent of public instruction might each be very capable in his own field, yet they might have very little in common and might find no advantage whatever in coming together at regular intervals to sit as a consultative or advisory body. Such a cabinet or council would likely be a wholly artificial agency with nothing in particular to do.<sup>2</sup> A formal meeting of administrators, who are certain to be rivals to a degree, is not the best place in which to plan a comprehensive legislative program for the whole state. A well-conceived budget bureau can serve this purpose much better.

But there is another important matter that has a bearing on the organization of line departments. It is that the legislative function needs to be decentralized. In connection with nearly every one of the

<sup>1</sup> The following quotation is an excellent statement of this view. Mr. Buck develops the idea very ably in his book. It is a view that has been widely held by students of administration. "Each department should be headed by a single officer appointed and removable by the governor. This arrangement places beyond question the responsibility for the administrative work of the government and makes the governor in fact, as well as in theory, the responsible chief executive of the state. The department heads should constitute a cabinet to advise with the governor in matters of administration and to assist him in budgeting. Responsibility for the work of each bureau or division should be placed on a single officer directly accountable to the head of the department. The bureau heads should, as a general rule, be appointed by the department heads under which they work." *Op. cit.*, p. 5.

<sup>2</sup> Professor Pollock has this to say about the governor's cabinet under the Ohio reorganization code: "Under Governor Donahey with the exception of a few organization meetings at the beginning of his administration, there have been no cabinet meetings, the governor preferring to call in the different directors separately to talk over the work of the state government. His reason for not calling cabinet meetings is that nothing could be accomplished through such meetings which could not be accomplished through individual interviews with the directors. He also believes that state activities can be co-ordinated quite as well without cabinet meetings as with them. Hence he has not used the cabinet idea." "Four Years Under the Ohio Reorganization Code," *National Municipal Review*, XIV (1925), 562.

major fields of state administration important questions of policy that cannot be adequately covered by legislation need to be settled.<sup>3</sup> This argues for plural department heads—boards or commissions—to exercise quasi-legislative functions within broad limits set by law. Administration is something more than executing the law—something more than merely doing specific things which the legislature has said shall be done, with eyes forever fixed upon the statute. Major departments of administration need to be released from legislative strait jackets. This is not to say that legislatures should abdicate, and that there should be miniature legislatures in each administrative department; instead, it is to recognize the fact that if administrative departments are to attain a maximum of usefulness they must be allowed a considerable measure of discretion in dealing with the problems that lie within their respective fields.<sup>4</sup> State legislatures ordinarily

<sup>3</sup> “. . . We maintain that the legislature in our country is undertaking constantly to control administrative details that can better be left to the executive. On the Continent, whether in republic or monarchy, the legislature meddles very little in administrative detail; but in this country popular opinion still maintains the old town-meeting tradition that a popular legislative body can and should regulate executive tasks in the smallest detail.

“Here is an example. In Indiana, in the *Annotated Statutes 1926*, Sec. 12379 directs that each prisoner in the penitentiary shall receive ‘not less than three quarters of a pound of clear beef, pork, or other meat’ each day; Sec. 4294, on Soldiers and Sailors Orphans Homes, directs the Board to erect a number of described buildings, including ‘two additional school-rooms,’ ‘new waterclosets,’ and ‘six additional cottages’; the latter act having been passed in 1891, thirty-five years before! The same statute-book contains hundreds, if not thousands, of similarly inappropriate legislative acts meddling in administration. And the corresponding statute-books of forty-seven other states are bulky with this perverse legislative usurpation.

“Again, look at any federal appropriation bill and see how many petty details it attempts to regulate. If the biennial Treasury Department appropriation bill of 1932 does not say how many doormats the lighthouse at Point Lobos, California, shall have, it says many things equally absurd; we have perused them in the reports of committee hearings.” John H. Wigmore, “Administration by the Executive *vs.* Administration by the Legislature,” *Iowa Law Review* (January, 1933), p. 203.

“When a law is dealing with a large and complex problem, even if the attempt is made to cover all contingencies that may arise, it is impossible for the legislature to look ahead far enough to see what they will be. The same thing is true in a minor degree when the executive and administrative authorities have developed, supplemented, and filled in the law by rules, regulations, and orders. A certain minimum of incidental sub-legislation will still be needed. . . .” F. F. Blachly and M. E. Oatman, *Administrative Legislation and Adjudication* (Washington: The Brookings Institution, 1934), p. 30.

<sup>4</sup> “No clear line can be drawn between legislation and administration. Legislation may decide major policies, or it may decide minor ones. Most students now believe that legislative bodies have been attempting too much. They have enacted a multitude of rules and regulations which should have been left to the discretion of administrative agencies. Accordingly, the prevailing idea now seems to be that, for the sake of efficiency in both legislation and administration, administrative agencies should receive broader delegations of rule-making or sub-legislative power. Of course they already exercise such power. If one were to filter out of present-day administrative agencies

meet for a few weeks every two years. Under these circumstances it is very difficult for them to anticipate the problems of policy that will arise in the various administrative areas, or to enact laws that will be adequate to guide administrators without the need for their exercising discretion, judgment, and thoughtful deliberation.<sup>5</sup> The administrative structure should be organized in such a way as to take account of this. Therefore, in most of the departments there ought to be a plural agency to exercise this discretion, to deliberate upon policies, to consider the need for changing rules, for slowing up activities along one line or for emphasizing other aspects of the department's work, as occasion seems to require.<sup>6</sup>

Furthermore, the chief administrator in each department—be he a superintendent of public instruction, a director of welfare, a commissioner of health, or a chief engineer of a highway department—ought to be responsible to a small group, a board or commission, wholly concerned with the work he is doing, rather than to a somewhat remote and very busy governor. This is not to eliminate the

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all of their discretionary powers and policy-making functions, these agencies would assume the inflexibility of *rigor mortis* and legislative bodies would be drowned in a flood of details." Millspaugh, *Local Democracy and Crime Control*, p. 153.

<sup>5</sup> In his essay, "The Science of Public Administration," Doctor W. F. Willoughby brings out the point that determination of policy is necessarily part of the administrative process.

"... It is certain that due appreciation is not had, either by legislators themselves, or by the general public, of the extent to which our legislatures are integral, and, indeed, dominating, parts of our administrative machinery. Misled by a loose use of terms, one usually thinks of all administrative powers being lodged in the executive branch of government. In point of fact real administrative authority, and primary responsibility for the conduct of the administrative affairs of the government, reside, under our political system, in the so-called legislative, rather than in the executive, branch of government." "The Science of Public Administration," *Essays in Political Science in Honor of Westel Woodbury Willoughby* (Baltimore: The Johns Hopkins Press, 1937), p. 41.

<sup>6</sup> "... It is widely admitted that the work undertaken by the State in recent years has enormously increased, and in consequence that a heavy burden has been thrown upon government departments. Not merely the work of the latter has increased, but its *kind* has also altered. The tasks of administration are now such as to bring the administrator up against the varied relationships of the citizen and the complexities of social life. The older conception of the State as a law-making and law-enforcing body no longer conforms to political facts. The State no longer stands merely for an order which it seeks to define in legal terms, and strives to maintain. This traditional function of the State, by many regarded as the *sole* function, has become widened, because the conception of legal justice has been seen to involve the wider conception of social justice. The State has now assumed the additional character of an organization striving to secure certain *services*—education, health, etc." B. M. Laing, "The Legislative Functions of Government Departments," *Public Administration* (July, 1930), p. 344.

"... It seems to me essential to admit that the departments are most favorably placed to decide about the administrability of proposed legislation, and hence upon the nature of the legislation. Why not therefore devise a scheme in which departments will legislate with regard to their own problems?" *Ibid.*, p. 347.



governor by any means, but it is to recognize the need for establishing clear-cut responsibility so far as the chief administrator is concerned, and also the desirability of providing him with a small group to whom he can go for advice and suggestion and with whom he can discuss at length the problems of the department. Actual administrative authority should be vested in one person, possessing the highest possible qualifications; but even the very best of these administrators, not to say all of them, need to be held responsible, in the best sense of that term. They cannot well be truly responsible directly to the legislature. It is to go beyond the reasonable limits of concentration to make them responsible to a governor who is practically unable to assume responsibility. The answer is to establish appropriate plural agencies, to which they can truly be responsible, in each major field of administration.<sup>7</sup>

Furthermore, the chief administrative officers in charge of the various departments should not be involved in the political fortunes of the governor. If these officers are appointed by him for terms corresponding to his own, it is inevitable that they should be thus involved. This is to inject politics at precisely the points where politics ought to be eliminated—the offices of the chief administrators. These people should be high-class administrators, not the chief political henchmen of the governor. They should be largely indifferent to his political aspirations. They should retain their positions so long as they are good administrators, and not merely so long as the governor can win elections. It should not be understood that the departments are to have new chiefs every time a new governor is elected. When the

<sup>7</sup> Professor Pollock touches upon this point in his discussion of the Ohio code. "One general criticism which has been directed at the reorganization of several departments, especially the departments of public welfare, health, highways, agriculture and education, is that there cannot be the necessary continuity of policy as long as the departments are run on the principle that each governor has the right to choose his own directors. The various non-partisan organizations such as the Farm Bureau Federation, the Ohio Public Health Association, the Ohio Good Roads Federation, and certain charitable organizations all base their criticisms of the reorganization code upon this one arrangement which makes the head of each department a political head. They feel that better directors will be chosen and a more continuous and effective policy will be had if the power to appoint the director of the department is vested in some large unsalaried board whose members have over-lapping terms. This, they feel, will remove the work of the department from politics and insure more efficient administration. . . ." *Op. cit.*, pp. 555, 556.

See E. Pendleton Herring, *Public Administration and the Public Interest*, p. 42, for a discussion of another reason for having plural agencies in the departments. They afford an opportunity for private organizations and business and professional people affected by the work of administrative units to be represented: "If officials are not to become aloof and arbitrary bureaucrats, ways must be devised for keeping them responsive to the groups with which they deal; . . ."

governor appoints department heads and they are solely responsible to him they are under terrific pressure to promote his political ambitions in every possible way. That is not good for administration; nor is it good for administration to put new people in the key positions every few years.

These considerations partly offset the argument that in order to have good administration, responsibility and power must be concentrated in the hands of one person. Analogies are often drawn from the business world and it is pointed out that in business concerns administrative responsibility and power are concentrated in the hands of single individuals. But it should be realized that corporation presidents do not have to conduct political campaigns every two or four years, nor are department foremen changed every time there is a new superintendent or general manager. The advantages to be derived from having single, responsible officers in charge of administration are clear enough, but it must be kept in mind that there are very special problems in the realm of government that do not appear in the business world.

Concerning this tendency to concentrate administrative power in the hands of single administrators responsible solely to the governor, Dr. Millspaugh says: ". . . Trapped by superficial analogies and misled by structural appearances, the administrative reorganizer momentarily forgot that democracy is a fundamental issue and a conditioning factor in all aspects of American government.

"Unduly concerned with the apparent weakness of chief executives, the promoter of better administration proposed concentration of authority. Confused by the multiplicity of agencies and of political subdivisions, he advocated centralization and consolidation. Irritated by the American predilection for boards and commissions, he recommended their abolition and the establishment in their stead of hierarchical single-headed bureaucracies. While transferring to administrative departments as much legislative power as possible, he sought to eliminate from administrative agencies the slow process of representation, conference and deliberation. The reformer of public administration was seeking to simplify the complicated, or, as the Negro preacher put it, to 'unscrew the unscrutable.' As a matter of fact, he was proposing an administrative pattern motivated subconsciously by the speed and profit manias, a pattern that was essentially dictatorial, and that largely disregarded American experience and the implications of popular government."<sup>8</sup>

<sup>8</sup> A. C. Millspaugh, "Democracy and Administrative Organization," *Essays in Political Science* (Baltimore: The Johns Hopkins Press, 1937), pp. 65, 66.

Safeguards need to be set up in the field of government to obviate the evil of changing not only the chief administrator—the governor—every few years, but also all the principal department heads. Much of the advantage of concentrating responsibility is lost if it is continually being concentrated in the hands of new people who are never able to forget their political obligations to the man who appointed them. To establish boards in the various government departments to whom the chief administrators will be responsible—instead of being responsible directly to the governor—is to set up a desirable safeguard. It should help materially to insure that chief administrators give their best energies and attention to administration and not to partisan politics.

There is another flaw in the analogy often drawn from the business world. It has to do with the matter of determining policy. In government the determination of policy is a far more serious matter than it is in business. Government policies, whether determined by the legislature, the governor, department heads, administrative officers, boards, or commissions, may affect the property rights, liberties, health, and general welfare of the entire populace. Policies adopted by individual business establishments have no such implications. Basic policies are established by the legislature. But there are very long periods during which administrative agencies must act upon their own responsibility in settling questions that are not clearly or adequately covered in legislation. Here again, boards in the various departments serve a useful purpose. They perform a function that does not exist in private business and which is peculiar to government. If state legislatures were very much smaller, if they were unicameral instead of bicameral, and if they sat for long periods every year instead of for short periods biennially, this need might tend to disappear, for the legislature itself could then perhaps do the things which it is proposed that boards should do. To quote Dr. Millsbaugh again: “. . . Organization will call for careful planning to insure proportioned representation of weighted group-opinions. Such representation becomes too much attenuated and too frequently perverted when arranged through the executive alone or through the executive and the members of the legislature alone. Representation may be eventually looked upon as a necessary feature of every administrative instrumentality. When this view is accepted, administrative organization will need to be equipped with devices so that it may respond directly to the special currents of opinion that play in different ways on different areas of administration. . . .”<sup>9</sup>

<sup>9</sup> *Ibid.*, p. 72.

Most able administrators find a stimulating challenge in the possibility of winning the unqualified confidence of a board. It would be the mark of a good administrator to be able to do so. Technically he would be responsible and subordinate; in actual fact, if he were competent, he would assume aggressive leadership and convince his board of his own ability and the soundness of his judgment. Such a relationship between a board and a chief administrator is very wholesome indeed. The man who has the courage, the enthusiasm, and the personality to assume leadership in such circumstances is the best kind of administrator. Personality becomes more important than power. Furthermore, latent enthusiasms and abilities are released when one has an *opportunity*—rather than a *duty*—to explain, to argue for, to defend, and to expatiate upon a program before a select group of people who are genuinely interested in, and deeply concerned with, the success of the program. There is no stimulus to be had from recognizing responsibility to a remote authority that is too busy to be deeply concerned or even interested. The good administrator is entitled to the thrill that comes from winning the confidence of those who are genuinely interested in his work and who possess authority.

Concerning this problem Professor Holcombe says: "The passing of the elective principle has not thus far led to any general agreement as to the form of organization which should replace it."<sup>10</sup> He goes on to describe and compare five distinct types. Of the first type, departments headed by a single officer appointed by the governor, he says: "The first type is found in all the states and is commonly employed where the duties of the department are largely of a ministerial character. Such, for example, is the type of organization generally adopted for departments of banking and insurance. This type of organization is also beginning to be used for the performance of functions which involve a considerable degree of discretion."<sup>11</sup> This tendency has developed because competent observers are convinced that good administration calls for concentrated authority and responsibility. But in describing a type of organization in which a board selects an expert to assume direct charge of administration, Professor Holcombe goes on to say: "The paid expert is nominally the agent of the board, and the latter is the principal in the conduct of affairs. Actually the relations between principal and agent will be largely determined by the character of the men themselves. . . . This system has the advan-

<sup>10</sup> A. N. Holcombe, *State Government in the United States* (3rd ed.; New York: 1931), p. 436. (By permission of The Macmillan Company, publishers.) Also see pp. 434-445 for an excellent discussion of the various types of departmental organization.

<sup>11</sup> *Ibid.*, pp. 436, 437.

tage of combining the enthusiasm and personal enterprise of intelligent amateurs with the experience and skill of the professional administrator. Under the most favorable conditions, it brings together in one harmonious organization the public-spirited citizen and the bureaucrat."<sup>12</sup> It also has the very great advantage of insulating the department from political pressures and preventing frequent change of chief administrator. This has long been recognized in the field of education. The need is just as great in the fields of public welfare, agriculture, public health, conservation, and public works.

This point is illustrated in the case of the city manager. The city manager should lead his city council, and the competent ones do. The county engineer who can win the confidence of the county boards, the social worker who can win the confidence of her local welfare board, the general manager in private industry who can win the confidence of his board of directors, are all good examples of this excellent relationship. In the realm of state administration it should be exploited further than it has been.

To do this sort of thing might seem at first to push the governor backstage, but such is not the case. He would have very great power with respect to services in which he ought to be primarily interested—finance and justice—and he would have under his immediate control the principal staff services. No chief executive would need to have additional devices through which ultimately to control administration. Each fiscal year, through the budget director, the governor would find an adequate opportunity in connection with preparation of the budget to go rather intensively into the work and the plans of each of the line agencies, to discuss problems and program with the chief administrator in each department and with the members of the board concerned. And through the comptroller, the purchasing agent, and the chief of the bureau of personnel he could have his hand upon every one of the various departments. At the same time each department would enjoy a considerable measure of independence to develop its own plans and policies.<sup>13</sup>

<sup>12</sup> *Ibid.*, p. 438.

<sup>13</sup> Concerning the proposal to give the governor complete, direct, authoritative control over all administrative activities, Professor Coker had this to say fifteen years ago: ". . . I am ready to part company with the short ballot advocates if they contend that, in order to be consistent, we must place the entire control of our administration in the hands of one or a few officials changeable every two or four years. With the exception of the national government of the United States, a few cities of the United States (Pittsburgh, Boston, Cleveland, for example), and some Latin-American governments, no important government—national, district, or local—anywhere in the world is organized on the principles, or on the basis of anything approaching the principles, of narrowly concentrated authority and responsibility—principles upon which many

This qualified independence could be expanded largely by means of lump sum appropriations. If the funds appropriated to the various departments were not all earmarked in minute detail, the responsible authorities in each department, the chief administrator and his board, would have leeway to make plans and to apply the principles of budget making within their own respective areas. Opportunity to do this would be very stimulating to those concerned and the higher positions in the various departments would become attractive to men and women of ability and vision. Administration would then very definitely become something more than the routine execution of the law. With the governor in the background, amply equipped to exert a restraining influence, administrative departments would be liberated from the deadly, strangling net of detailed statutes.

Of course, the very difficult problem of constitutional law concerning the right to delegate legislative power would arise. One of the basic principles of constitutional law in the United States is that the legislature may not delegate its legislative power into other hands. No doubt this principle is sound. A legislature should not abdicate by authorizing boards and commissions and the chief executive to make law. A state legislature might appropriate several million dollars in a lump sum to a department of public works and in one short sentence authorize it to carry out a huge program of public works, with no restrictions. Would this involve unconstitutional delegation of legislative power? Millions might be bestowed upon a state board of education with a brief authorization to maintain some institutions of higher learning. Would this be an improper delegation of legislative power? There is no clear answer to such questions. It would depend upon what the administrative agencies tried to do. The question arises chiefly when the administrative agency undertakes to make rules and regulations that involve impairment of personal and property rights. When highway authorities undertake to do things that involve destruction of property or impairment of its value, when health authorities undertake to close up theaters or to condemn food, when a department of agriculture undertakes to destroy diseased cattle, or when a building code requires property owners to make expensive improvements, the question comes up as to whether or not the administrative agency instead of the legislature is making law. A too narrow view of what "legislation" really is results in virtual paralysis of administration. Too broad an interpretation might lead to

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of our reformers of state and city government are defending their plans for consolidated executives." "Dogmas of Administrative Reform," *American Political Science Review*, XVI (1922), 410.

abdication on the part of legislatures, and the public would find itself subject to the whims of a dozen little "administrative legislatures."

The courts are struggling with this problem today as never before in all our history.<sup>14</sup> The reason is perfectly clear, for the enormous expansion of administrative activity inevitably raises the question in new and baffling ways. The old familiar guiding principles, having to do with interpretation of due process of law, prove to be inadequate. The courts are slow, and the traditional concepts of private property and personal liberty stand solidly in the way of expanding administration. But there can be little doubt that in the long run legislatures will find it possible to bestow adequate power upon administrative agencies to do effectively the all-important things which public opinion clearly demands that government undertake to do. Huge projects in the realm of "service" rather than "control" can be carried forward without serious interference with personal or property rights; and state administrative agencies can be organized in such a way as to be prepared to take on great responsibilities involving the exercise of broad discretion of a quasi-legislative character.

This is a very important point which is often missed by people who are concerned with bringing about administrative efficiency. They condemn boards and commissions as administrative agencies; and they are right in doing so, for it is bad to scatter responsibility for the work of administration. Concentration of responsibility and authority is the very essence of good administrative organization. In the business and industrial world this principle is rigorously applied and it holds equally true in government. Furthermore it should always be applied

<sup>14</sup> " . . . The ideal legislative basis for detailed sub-legislation is not only a theoretical problem of constitutional law, but is likewise one of the most important practical problems connected with the whole process of administrative legislation." Blachly and Oatman, *Administrative Legislation and Adjudication*, p. 24.

A British writer points out that "legislation" is not complete until it has been amplified by administration: " . . . As for the duty to know delegated legislation, it must be the same as the duty to know the Acts of Parliament which give birth to it and to which it is complementary. By-laws are as good law as Acts of Parliament, except that an Act cannot be judicially questioned whereas delegated legislation can, though the odds are against the questioner. Sometimes Parliament expressly says that the delegated legislation shall have just as much force as the Act which authorises it. The exact meaning of such a provision has been disputed, but we can close this introduction with a statement which is indisputable. The direct legislation of Parliament cannot be treated as something separate and self-contained; the statute book is not only incomplete but even misleading unless it be read with the delegated legislation which amplifies and amends it." Cecil T. Carr, *Delegated Legislation* (Cambridge: The Cambridge University Press, 1921, [By permission of The Macmillan Company, publishers.]), pp. 5, 6.

Mr. Laing suggests that a different word is needed to describe administrative "legislation." "If the term 'legislation' is still used it must be radically re-interpreted." *Op. cit.*, p. 345.

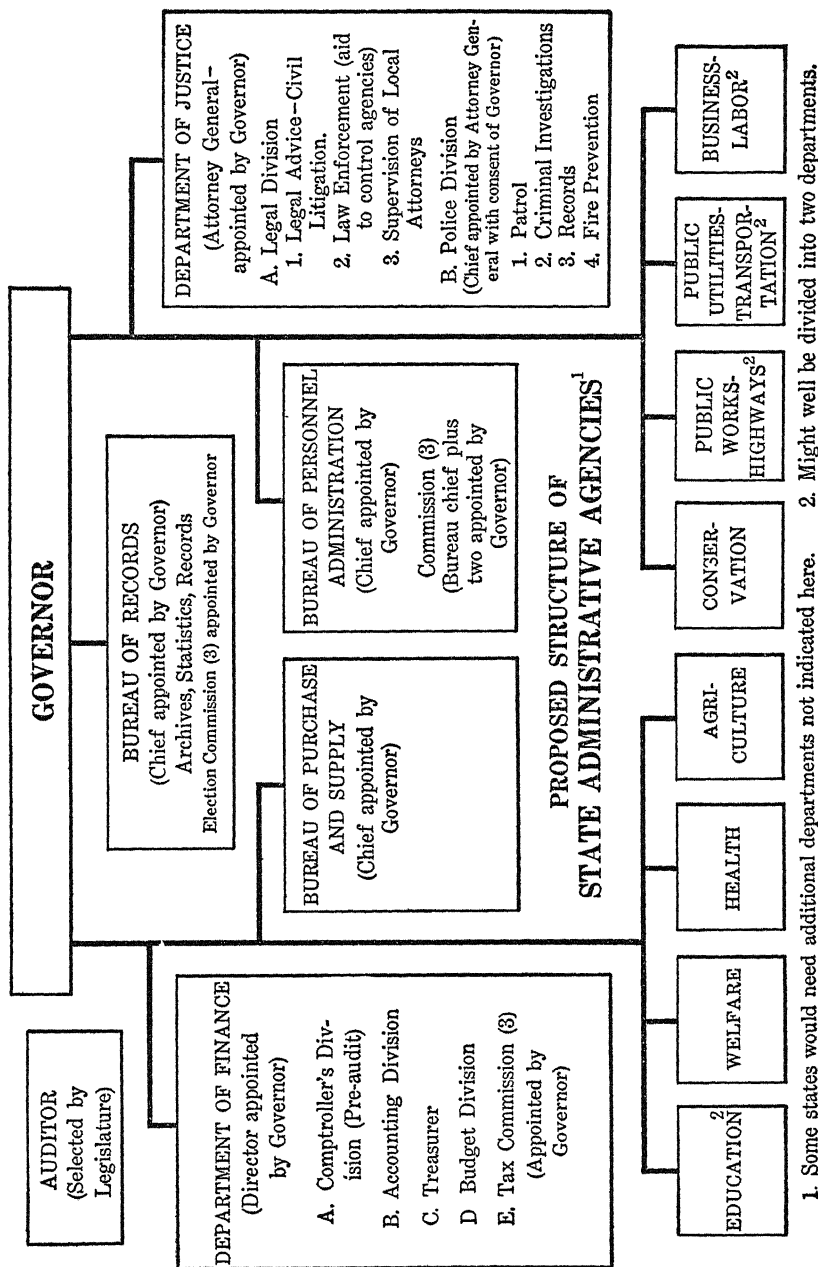
when the task of administration is simply to *do* the things which it has been decided shall be done.

But the profoundly impressive fact is that state administrative departments today are being charged with responsibility, not merely for *doing* things, that is, executing the law, but for deciding *what shall be done*, and to a considerable extent *when* and *how*. And an administrative organization which is designed wholly in accordance with the theory that the sole function of an administrative department is to *do* things may not be suited to the task of deciding *what* shall be done.

In the report of the President's Committee on Administrative Management, submitted January 8, 1937, plural agencies of administration are roundly condemned. The point is made that portions of executive power have been bestowed upon independent agencies of administration, whereas all executive power ought to be retained by the chief executive. The suggestion is made that to bestow executive power elsewhere than upon the executive is unconstitutional. And it is argued that most of the federal administrative services should be consolidated into a dozen large departments under department heads who would be accountable to the President and in whom would be lodged the executive powers which now are scattered. Thus a considerable number of the independent plural agencies which it is believed clutter up the federal administrative structure would be swept away and much more efficient administration would result.

With respect to this particular point the language of the report is vigorous, uncompromising, and convincing. There are indeed altogether too many independent agencies in the federal structure. Executive power has been scattered and efficiency has been impaired. But there is another point that needs to be dwelt upon. It is the enormously significant fact that, in addition to bestowing executive powers where perhaps they do not belong, Congress has also been delegating vast legislative power. The problem then is, not only to keep executive power where it belongs, but to vest quasi-legislative power in agencies that are suitably organized to exercise it. There is room for doubt whether single department heads, accountable to the chief executive, should have this quasi-legislative power. There is still more reason to doubt whether or not American state legislatures will be willing to vest such power in them, whether or not in theory they ought to have it. This partly explains the tendency of state legislatures to keep on setting up more boards and commissions. State administrative agencies should be reorganized, not only with a view to promoting administrative efficiency, but also with a view to encouraging legislatures to





1. Some states would need additional departments not indicated here. 2. Might well be divided into two departments.

delegate sublegislative powers which they themselves are not in position to exercise properly.

Unified, concentrated, authoritative control is clearly desirable with respect to what have been described in the preceding chapters of this book as staff functions. Such concentrated power is by no means so clearly indicated with respect to the details of administration within the respective administrative areas such as education, welfare, agriculture, and conservation. Therefore it is believed that no violence is done to sound principles of administration if the chief administrative officers in these various areas are made accountable to plural agencies which determine the policies that the administrators are to execute. Such an arrangement avoids giving sublegislative powers to single executive officers, and it also avoids giving purely administrative functions to plural agencies. Both objectives are important. Too much attention has been focused on the latter.

In most of the chapters which follow, this thesis is developed with respect to the needs of the particular services under consideration. The control boards which are suggested for the departments are not to be looked upon as mere consultative bodies, or as advisory boards, or as mere rule-making bodies, or as quasi-judicial agencies. They are to be looked upon as suitable instrumentalities designed to exercise the broad discretionary power which must be delegated by state legislatures to the administrative departments. Other plural agencies, such as the advisory boards and quasi-judicial bodies, have entirely different functions. These are discussed in connection with a study of the departments in which it is believed they can serve a useful purpose.

It is now in order to direct attention to the organization and functions of the various line agencies of administration that are likely to be found in most of the states.

## CHAPTER X

### PUBLIC EDUCATION

TURNING now to the line agencies of administration, those departments and offices that carry forward the various projects which the state has determined to embark upon, it will be found that activities in the field of public education antedate most others. Since the time when the earliest New England settlements were established on American soil, government on this continent has been concerned with education. To be sure, it is true that public education has been looked upon for these past three hundred years as the peculiar domain of local government. The tiny school district, an area accommodated by a single one-room schoolhouse, has been many times described, defended, and exalted as the ideal unit of self-government. Small communities have literally organized around their little schoolhouses and have set in motion the elementary machinery of democratic government. And to this day the tiny school districts, townships, cities, towns, and counties have everywhere clung to the machinery of school government as the special prerogative of the local area.

Nevertheless, in spite of the fact that public education has been so deeply entrenched in the local areas, it has been clearly recognized at least since the middle of the last century that there is something important for the state itself to do in connection with education. Hence the office of state superintendent of public instruction very early took its place in the array of principal state offices. It was to be expected that the office would be made an elective one, and it still remains so in many of the states.<sup>1</sup> Not so frequently was it made a constitutional office as were the offices of secretary of state, attorney general, and treasurer. But this difference in status has been a relatively unimportant one, for wherever the office was first established by act of the

<sup>1</sup> "The most serious burden under which the office [chief school administrator] still labors, however, and in nearly three fourths of our States, is that of partisan nomination and election. This, coupled with the short term and the habit of rotating the office around among the electorate, has usually kept the best school men in the State from considering the possibility of the position. The office has offered no career for any one, with the result that it has too often been left as a retiring political reward for the old and successful county superintendent." Ellwood P. Cubberley, *State School Administration* (Boston: Houghton Mifflin Company, 1927), p. 276.

state legislature instead of by constitutional provision, it usually was made just as independent of the governor and the other constitutional offices as if it had been provided for in the constitution as were the others. The term of office was usually the same as that of the governor and he was given no greater power of supervision or removal than he possessed with respect to those offices created by the constitution itself.

There was one difference, however, that has come to be of very great importance in contemporary times. The difference is this: it is at least possible for the legislature to reorganize the office, to incorporate it into a newly designed administrative agency, into a true department of public instruction erected in accordance with modern ideas as to what such a department ought to be and do, without having to amend the constitution. A very serious obstacle to administrative reorganization has been the constitutional provisions for certain chief administrative officers such as treasurer, auditor, or comptroller. But since the office of superintendent of public instruction is not so frequently rooted in the constitution, legislatures have had more freedom to deal with it as they pleased, and thus reform has been more easily achieved. Even so, progress has been much delayed.

From time to time other state agencies than the office of superintendent have been set up to deal with some aspect of public education. Thus, state boards of education have been established, usually by statute. Sometimes these boards have been given a measure of authoritative control over the superintendent, if not the power to appoint and to remove him. At other times the role of the board has been the anomalous one of giving advice only. Sometimes the board has exercised a power independently of the superintendent, such as that of certifying public schoolteachers.<sup>2</sup> In other cases the state board has been concerned only with the institutions of higher learning. The appearance of state universities, agricultural colleges, and normal schools has led to setting up independent boards of trustees or boards of regents each charged with governing only one of the state institutions. *Ex officio* boards composed of several of the principal state

<sup>2</sup> "A number of states experimented prior to 1837 with the problem of organizing a state department in charge of education. In 1837 Massachusetts organized the first state educational agency which has been in continuous existence to the present time. Massachusetts created a state board of education. The chief executive officer of this board, long known as the secretary of the board, now known as the commissioner of education, was and is an expert supervisor of the state school system.

"Since 1837 all the states have organized state departments of education." Charles H. Judd, *Problems of Education in the United States* (New York: McGraw-Hill Book Company, Inc., 1933), p. 103.

administrative officers sometimes serve in this capacity; such boards may be set up to administer the laws dealing with vocational education.<sup>3</sup> Thus the principle of sound integration has been violated and it has come to pass that most of the states now have several independent agencies each dealing with some aspect of public education.

Thus with a view to administrative reorganization in this field it is important to consider what are the things which the state itself should be prepared to do and what are the best ways of organizing administrative machinery for the purpose of doing them. Of course there is no one correct way. But there are bad ways and there are good ways, and the principles of administrative organization already discussed in this volume should afford a guide.

### THE STATE SUPERINTENDENT

Many of the laws establishing the office of state superintendent provide, in a seemingly potent but nevertheless vague and innocuous phrase, that it "shall have general supervision over" the public schools of the state. One might think the words "general supervision" would convey a large measure of power and authority, but that is not the case. Such a grant of seeming power might be thought to make it possible for the state superintendent to dictate with respect to the qualifications of teachers or even their appointment; but it does not. Does it convey power to dictate with respect to the length of the school year, the subjects to be taught, or the character of school buildings and their equipment? It does not. Does it convey power to examine into the quality of instruction being offered in the public schools and to require the dismissal of incompetent teachers? It does

<sup>3</sup> "The state superintendency developed before the state board, which still is lacking in any effective form in a half dozen states. It exhibits a sharp contrast to the state superintendency in that, the country over, it fails to conform to a type. For example, in New York it is elected by the legislature; in Rhode Island it is ex-officio and elected by the legislature; in Virginia it is ex-officio and elected by the upper house of the legislature; in Michigan it is ex-officio and popularly elected. In the majority of the remaining states it is partly ex-officio and partly appointed by the governor, while the rest look with about equal favor on purely ex-officio boards and boards wholly appointed by the governor. The appointive members are sometimes given qualifications which limit the choice of the governor closely, as when one must be chosen from among the county superintendents, another from among the city superintendents, and two from faculties of normal schools, as in South Dakota. The upper house of the legislature must sometimes ratify the choice of the governor. The state superintendent is the most common ex-officio member, and the governor comes next." William A. Cook, *Federal and State School Administration* (New York: Thomas Y. Crowell Company, 1927), pp. 148, 149.

not. Does it give power to require that public schools expand or reform their programs of instruction in order to meet the needs of the day as envisioned by the experts in this field? By no means.

What then does "general supervision" mean? The answer is that, standing alone, this grant of power means next to nothing. The superintendent does have power to see that the laws of the state concerning public education are obeyed, and presumably the power to supervise implies the power to investigate in order to see if the law is being obeyed and to report to the attorney general if it is not. But such meager power as that is a far cry from the reasonable implications of the term "supervise." The superintendent must be able to cite explicit authority if he is to give explicit orders. If he is to be something more than a sort of exalted police officer in the realm of public education, he must enjoy considerable discretion and power to determine educational policy himself, or else be the administrative officer for a board that does have broad power.

Of course, even where power and authority have been exceedingly meager, superintendents of public instruction have made their offices very useful indeed to local school authorities. But this has been done rather by way of advice and help than by the exercise of true supervision and authoritative control. Local authorities have often been only too thankful to receive advice and help, and capable state superintendents have built up most effective and useful administrative services to this end. Advice is given with respect to the employment of teachers. Employment agencies for teachers have been maintained. Very helpful advice is given regarding financial programs for school development. Model plans for buildings and grounds have been made available. Courses of study have been outlined and suggested, textbooks have been evaluated, institutes for local superintendents and teachers have been conducted. In a great variety of ways the able state superintendent has made his office well-nigh invaluable to local authorities.

Especially has the state superintendent's office been useful in the matter of interpreting school law and resolving controversies. This service has been a blessing to the attorney general's office. School law, with respect to financing school projects, issuing bonds, and similar matters, is very elaborate. The law having to do with tuition, teacher contracts, the use of school buildings, the power of school superintendents and of school principals, and the rights of pupils and their parents, is very extensive and elaborate. A great many controversies are sure to arise, many of them very petty but others quite important. Ordinarily these cases may be appealed to the state superintendent's

office and there an opinion is rendered. In the vast majority of such cases the opinion of the state superintendent is final. It closes the case, not because the superintendent has legal authority to render final judgment, but because the chances are overwhelming that his judgment is correct. It would be futile to go before the courts with the matter. Of course the loser in such a controversy may appeal to the courts if he wishes to do so. Nevertheless, state departments have served a very useful purpose in preventing an enormous amount of litigation, to say nothing of relieving the attorney general.

But in spite of all these very useful services, the state superintendent rarely has power really to supervise, to require that things be done differently simply because it is better that they should be, to check up on inefficiency, to require that better standards of achievement be met, to criticize, and in general to exercise a considerable measure of authoritative control.

#### TENDENCY TO EXTEND POWER

It must be said that there is a great difference of opinion as to the wisdom of vesting such power in a state office. Nevertheless the tendency would seem to be in that direction. State legislatures have been moving slowly, but there is no doubt that they have steadily invaded further the prerogatives of local self-government with respect to most functions of government, education included. The length of the school year and compulsory attendance were dealt with by law many years ago. Upper limits to the local taxing power for school purposes are universally fixed by law. In more recent times laws have been enacted dealing with other aspects of school finance, such as the right to issue bonds and the right to acquire property for school purposes. For the most part these laws reflect the incompetence or untrustworthiness of local school officials. Evidence of this incompetence can be found in both directions. On the one hand, local authorities many times have launched very unwise building programs involving expansion and the assumption of tax burdens that were wholly unwarranted by the existing circumstances. On the other hand, local authorities have been very niggardly, more concerned with keeping taxes down than with developing the educational facilities. State laws that impose limitations on the one hand and compel the imposition of minimum rates on the other clearly reflect all this.

Laws concerning teacher qualifications have been enacted, and minimum standards have been set so that local boards may not employ anyone they please. Minimum and maximum salary scales have

been established. In contemporary times building standards have been prescribed and so-called state aid to local districts has been extended whenever these standards were attained. Still more recently, legislation concerning courses of study has been enacted. All this indicates a steady invasion of local prerogatives that is more than likely to continue.

Serious difficulties are sure to follow in the wake of this tendency; indeed, they have done so already. The legislature cannot give the time and attention to these problems that they deserve and it should not be expected to do so. The old idea that the legislature should enact a detailed law dealing with these matters, and that the state superintendent should enforce it as though he were a sort of policeman, is certain to prove unworkable. In this field as in many others there is need of what may be called a decentralization of the legislative function. The phrase is not truly apt, since it implies delegation of legislative power that is not actually intended. The idea is, that very broad discretion should be vested by the legislature in a properly organized state department of public education to deal intelligently with all these problems and all the new ones that are sure to arise. There should be a state board of education empowered to function as a small quasi-legislature in the field of public education.

This idea is not revolutionary; it merely involves the extension of a very common practice. The steady and rapid expansion of government into many new fields will make it necessary for legislatures to follow this practice to a greater extent than they have done in the past.

No one member of a legislature can be expected to be familiar with all the important fields into which modern governments are rapidly extending. The best of men are likely to be confused and very much at sea when they find themselves plunged into a multiplicity of unfamiliar problems and called upon to legislate concerning them within a few short weeks. Many members, who take refuge in being deliberately reactionary, refuse to give their support to measures the need for which they do not readily appreciate. A great many other members, equally unfamiliar with the problems, become blind followers of a few aggressive leaders and trade off their support of measures in which they have little interest for reciprocal support of those measures in which they do happen to be interested. This is an unfortunate situation but it is hard to see how it can be remedied if legislatures must continue to struggle under the huge burden of legislating in detail with respect to all the activities of the modern state.



The scheme suggested here is based upon the assumption that the legislature will confine itself to broad problems of public policy. Let the detailed "legislation" be enacted by a small body of people, truly interested in, and thoroughly familiar with, the field in which they are to "legislate." Of course the measures adopted by such a board would have to be in strict accordance with the provisions of the constitution and statutes. The legislature itself would always have authority to limit the power of the board and to set aside its measures.<sup>4</sup>

To do this sort of thing would be greatly to increase the importance of the board. One reason why boards in the administrative structure have often not functioned in a manner to command respect is that their powers have been so circumscribed and limited as to stultify the board members. Competent and busy people are likely to take small interest in the work of agencies that have very little power and can do nothing important. The best way to command their interest and best energies is to give them power and authority and thus to cultivate a sense of responsibility. To give a board impressive powers of a quasi-legislative character, to give it power to determine important policies, to give it a large measure of freedom in the matter of apportioning funds, and to give it authority over a competent chief ad-

<sup>4</sup> "Not only is there objection to crystallization of educational policies in state constitutions, but much can be said in support of the statement that specific, detailed legislation is also seriously objectionable.

"When a state has provided itself with a department of education made up of specialists, it should, in general, leave the details of school management to these specialists. The legislature should define in very broad, general terms the policies of education which it is willing to support and should leave in the hands of the state department of education the adjustment of details. Most regulations regarding schools should be administrative rather than legislative.

"Sometimes legislative enactments with regard to courses of study seem to have a high degree of justification. They are expressions of popular dissatisfaction with the failure of educators to respond promptly to demands that society regards as urgent. Even when there is justification for an enlargement of the curriculum, it would usually be better policy for states to appeal to their educational experts than to define the subjects of the curriculum through legislation." Judd, *Problems of Education in the United States*, pp. 106, 107.

"The board, whether elected by the people or appointed by the Governor, must be considered as a board representing the people to look after the educational interests of the State. Its prime functions should be to determine policies, to direct work to be undertaken and make appropriations for the same, to approve plans for investigations and assistants to conduct them, and to act on recommendations based on the results.

"It is important that a clear distinction between legislative and executive functions be preserved between the board and its experts. It is primarily the business of the board to legislate; it is primarily the business of the experts to execute policy which has once been decided upon. In all matters which involve new policy and new methods of procedure the experts should report back to the board for instructions; but, once having given these instructions, the execution of them should be left to the experts whom the board employs." Cubberley, *State School Administration*, pp. 292, 293.

ministrator, would be to attract very capable people to membership and to get out of them the best they have to give. The state should strive to do this.

### THE STATE BOARD OF EDUCATION

Members of the board of education should be appointed by the governor for relatively long overlapping terms. A board of seven members would not be too small; more than nine would hardly be necessary or desirable. The position should not pay a large salary. The members would not do administrative work themselves but would sit as a deliberative body.<sup>5</sup> A *per diem* allowance or a fixed honorarium could be established for their compensation. The latter arrangement would tend to eliminate the temptation to have meetings too frequently, although it is to be hoped that people who find places on a state board of education would not be moved by such temptation.<sup>6</sup>

<sup>5</sup> "1. The state board of education should represent the people of the whole State, and should therefore be a lay rather than a professional board. The educational work should be handled by the experts of the Board; the oversight and control of the experts should rest with the representatives of the people of the State.

"2. The board should be neither too small nor too large. Experience has shown that small boards are not infrequently one-man affairs, while boards which are too large do not secure effective action. The best experience seems to indicate that a board of seven is about the best size.

"3. The members should be appointed (or elected) for relatively long terms, and the appointments or elections should be made so that not more than one member shall go out of office each year. If the board is a board of seven, one member should be appointed or elected each year, for a seven-year term.

"4. If appointment is the method used, this should rest with the Governor, and it is desirable that a governor, during the first few years of his term of office, should not be able to change the character of the board. While there is perhaps no objection to confirmation by the Senate, this is not a necessity. It is desirable to place the full responsibility for good and bad appointments on the Governor himself." Cubberley, *State School Administration*, pp. 290, 291.

<sup>6</sup> "The members of the board should be paid their necessary traveling expenses, and possibly a small *honorarium* for their services, as \$200 yearly. A *per diem* should never be used.\*

\* "The chief objection to a *per diem* is that it tends to multiply and prolong meetings, and to encourage talk rather than action. This in turn tends to keep the best type of men off the board, as their time is too valuable to waste in this way. It also tempts the board to seize professional duties that it ought not to try to perform." *Ibid.*, p. 292.

"The efficiency of a state board of education should not be judged by the size of the compensation which members receive. They should be appointed because of a desire to serve the state but, if no remuneration were given either for time or money spent in attending the meetings, many people who would make admirable board members could not accept appointment. If, on the other hand, a sizable salary or honorarium goes with the position, there is danger that it may be sought by inefficient and unscrupulous persons with neither the desire nor the ability to render service, or that the office may be used in the payment of political debts. Most of the states, therefore, now

The proper relationship between the board and the chief administrator has already been pointed out. The superintendent of public instruction should be appointed by the state board of education. To have him appointed by the governor would be infinitely better than to have him popularly elected, and would not be a bad method. But it would be definitely better to have him be strictly accountable to the board and thus not conscious of divided loyalty.<sup>7</sup> He should be accountable to those who are empowered to determine policy, to those who know about the work of the department and are deeply concerned with it. For this reason it could not be the governor, for there are limits to human capacity.

A superintendent chosen by a board of education would not by any means necessarily go out of office with the governor. He would remain as long as he enjoyed the confidence of the board; presumably that would be as long as he was a satisfactory superintendent or until he chose to resign. Nothing could better serve the interests of good administration.

#### FUNCTIONS OF THE DEPARTMENT

Having selected a superintendent, the board would concern itself with the various matters touched on above, now often dealt with for the most part by the legislature itself. New ideas about school buildings and their proper construction are being developed. The state board, functioning through the superintendent, should have conclusive negative power in this connection, that is, power to forbid the

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follow the plan, which is sound in principle, of allowing expenses and small per diem payment. This makes it possible for the public-spirited man of moderate means but of recognized ability and interest to accept appointment and to serve his fellow citizens. The three plans followed at present are: allowance of expenses only; expenses and a small per diem payment while on duty; and an honorarium of definite salary." Henry E. Schrammel, *Organization of State Departments of Education* (Columbus: Ohio State University Press, 1926), p. 15.

<sup>7</sup> "Appointment by the Governor has given fairly good results in some States, and, as a plan, is preferable to popular election, but is not so good as election by the State Board of Education. The tendency, during the past decade, has been clearly to take appointment from the Governor and place it with the State Board of Education. The chief danger of the method lies in the fact that the Governor, interested in so many other state affairs, has neither the time to devote to the problem, nor the grasp of educational needs that will enable him to make as good selections as could be made by an interested board; and that, unless particularly capable and high-minded, he may himself use the office as a political reward with a view to strengthening his political machine. Once this is done, trouble and turmoil are usually not far ahead. Since 1915 four States — Delaware, Maryland, Minnesota, and New Hampshire — which previously used this plan, have abandoned it in favor of appointment by the State Board of Education." Cubberley, *State School Administration*, pp. 280, 281.

construction of school buildings that do not meet standards fixed by the board. An appalling number of unsuitable and ill-constructed school buildings are scattered throughout the country, enduring monuments to the stupidity, incompetence, misdirected zeal, and vanity of local school boards and enterprising small-town contractors. Many of these structures were bad on the day their doors were opened. Many others soon became obsolete and inadequate because of the shortsightedness and ignorance of those who were responsible for their erection. Public money is constantly being poured into the construction of such buildings, and this will continue until some competent authority has power to forbid projects that are not well designed to meet the needs they are intended to serve. Experts in the field have ways of determining these needs. The tax-paying public is entitled to the benefit of their best judgment. Modern school architects have made wondrous strides in the matter of designing buildings. School children everywhere should profit by their knowledge. Not a year passes but newer and better ideas are developed. Government should be so organized as to take advantage of this progress. To this end standards must be flexible. That is why no legislature can deal effectively with the problem. Nor should discretion and power be vested in one person only—the superintendent. This is the kind of function that should be exercised by a plural agency. A board could keep in step with the times, being guided and advised, of course, by a competent superintendent and his assistants. The money savings, to say nothing of the other benefits that could be effected by the exercise of negative power in connection with school construction, can never be measured.

Negative power with respect to certain financial aspects of local school projects also should be exercised by a state department. Other than by listening to the eloquent appeals of local enthusiasts and the complaints of childless taxpayers there are ways of determining how great a financial burden a school community can wisely assume. The financial resources of a community can be accurately measured by competent investigators. The public is entitled to the benefit of their knowledge and advice. Thousands of school projects have been launched that were in no wise justified by the resources of the community that was called upon to bear the burden, and crushing school taxes have been levied, not only to the injury of certain taxpayers but also to the dreadful injury of the whole cause of public education. A state department, able to command the services of experts in this matter, as local areas frequently cannot do, should have power to forestall these projects and to forbid the launching of ill-considered programs. The exercise of such a power involves a very wide measure of discretion

and there is great need for it. Within standards fixed by the board after due deliberation and study, a competent superintendent could administer this machinery without danger of serious abuse of authority.

The board should have very broad rule-making power with respect to the certification of public schoolteachers. This is a very complex problem. Obviously, one who is going to teach in a large city high school should possess qualifications that are not necessary for one who is to have charge of a small rural school. There must be several grades of certificates based largely upon general educational attainments. But this is not all. With the expansion of the public school curriculum it becomes necessary to require various kinds of special abilities. Those who are to teach home economics, physical education, dramatic arts, music, and other specialties, must meet certain very definite requirements that local school boards are rarely competent to pass upon, and should not pass upon even if they were competent, because standardization of such requirements throughout the state is eminently desirable.

This problem is destined to become much more complicated as years go on, since new activities for which specially trained teachers will be required are certain to be introduced into the public schools. There is, to be sure, some resistance to the tendency to introduce new and unfamiliar activities into the public schools, but there can be no doubt that ultimately public opinion will follow progressive leadership in this connection in order that the schools may perform an ever-widening service to the community. State administrative machinery should be so organized as to keep abreast of the times, to authorize the introduction of new activities, and to prescribe the minimum qualifications of those who are to handle them. The legislature itself is in no position to do this. The state board of education should have this power and should fix certificate requirements. It should, of course, be very largely guided by the superintendent.

There are evidences that vested interests are developing in this connection. It is only natural that schools or departments of education in the great universities should assume leadership in the matter of devising special courses that prospective teachers ought to have in order to hold teaching positions. It can easily come to pass that arbitrary certification requirements may in effect establish a sort of monopoly in one educational institution, as it were. Thus it may happen that in order to become qualified to hold a particular teaching position one must attend a particular institution a certain number of years, and take certain prescribed courses in that institution. When this is so,

it may happen that prerequisites set up by the institution itself, or by one of its departments, virtually have the force of law with respect to one who seeks a particular kind of teaching position.

There is much apprehension and considerable resentment about this matter. It is one reason why legislatures are unwilling to vest too much power in administrative agencies, and why they prefer to fix standards directly by law. But this approach is hopeless for reasons which have been sufficiently discussed. The problem is one to be dealt with by an administrative board exercising quasi-legislative power. The board of education would be composed of laymen, presumably interested in public education and conscious of a high responsibility. They would take action only after careful study and deliberation. There would seem to be every reason to believe that their action would be more intelligent, sound, and progressive than action by the legislature itself. Of course there would be much room for abuse of power, but that is inevitable. Legislatures themselves may abuse power, and what may be just as bad or worse, they may fail to take enlightened and progressive action when they should.

Certification requirements having been fixed, it would be the duty of the state superintendent's office to conduct examinations for certificates and to issue them to qualified people. In connection with this work it might be possible to secure the helpful co-operation of the bureau of personnel administration. Examinations for certificates are quite generally administered through local school officials whose services no doubt should continue to be utilized. But the task of devising suitable and appropriate examination questions, to say nothing of grading the papers, becomes more difficult and exacting every year. Examinations tend to become stereotyped, obsolete, and entirely inadequate. Thus a well-conceived system of administration may fail of its most important purpose if the actual preparation and correction of examinations is entrusted to subordinate and ill-qualified clerks in an overworked state department of public instruction.

It is marvelous how long a bad system of examinations can persist. Probably it is because those who pass the examinations are satisfied and make no complaint, and those who do not pass are more or less discredited if they do complain. This tends to entrench examiners in an atmosphere of smug complacency from which it is hard to dislodge them. The condition tends to develop in connection with all kinds of examinations, school and college examinations, civil service examinations, and examinations for teachers' certificates. The one who is responsible for giving the examination tends to become immune to criticism.

Abominable examinations persist throughout the entire educational world, even where the examiners are supposed to be especially well qualified and conscientious. Examinations are even more likely to become bad in the government service. Examiners themselves need to be scrutinized and examined, otherwise they tend to become self-satisfied martinets, effectively insulated against the criticisms of their victims. A state bureau of personnel administration should be so organized as to guard against this dry rot so far as possible, and it should not be allowed to creep into the process of certifying public school-teachers. Co-operation with the personnel bureau ought to be helpful, and the problem should be one of the chief concerns of the board of education. A small committee of the board might well give the matter frequent and serious attention. Of course, a thoroughly capable superintendent would be constantly on guard against this evil.

Matters of curriculum have been touched upon incidentally several times. The state board should have very considerable negative power as respects curriculum. Not only should the public be protected against having to pay ill-trained and incompetent teachers to do poor teaching, but it should be guarded against having time and money frittered away in carrying on activities that are of little or no value. To a considerable extent, perhaps too great an extent, the institutions of higher learning have set the pace in the matter of curriculum. The colleges and universities have set their entrance requirements as they have seen fit. The high schools have pointed toward these requirements and the grade schools have followed the lead of the high schools. There is some evidence that this hierarchy is breaking down; if it does, very much greater responsibility will devolve upon the public school authorities, and thus ultimately upon the state boards of education.

In some cases state universities have virtually abolished entrance requirements. They now receive graduates from accredited high schools regardless of what subjects have been studied. In other states the legislatures have required by law that the institutions of higher learning receive the graduates of such high schools. In either event—and both tendencies are likely to continue—the curriculum assumes new importance for the public school officials. This is true because in the absence of the restraints implicit in the university entrance requirements, the doors are flung wide-open to all sorts of experimentation with curriculum. State departments of education should be prepared to deal with this important responsibility. The legislature, in no position to deal with it, should not try to do so. In most states the public school curriculum is already fairly well standardized. The

problem will not be to compel local schools to offer subject matter that ought to be offered, but rather to impose some sort of check upon the tendency to experiment unwisely, to dilute the curriculum, and to fritter away time. This can be done through the exercise of negative power by a state department. State boards of education could safely exercise a power of veto upon curriculum expansion through the application of regulations to be administered by the superintendent. Appeals from his decisions could be carried to a committee of the board.

The state department of education must also be concerned with textbooks that are used in the public schools.<sup>8</sup> In a few states textbooks are provided free by the schools, and in those the power to select books becomes very important indeed. All manner of opportunities arise for sharp practice, bribery, and graft. If the state is to provide textbooks it is eminently desirable that every possible device known in administration be utilized to safeguard the process of making selection, in order that these evils may not creep in.

The student of administration must recognize the fact that certain kinds of administrative agencies are far more vulnerable than others, that the forces of corruption will be mobilized to bring tremendous pressures at certain points in the administrative structure, and not at others. The county treasurer's office, for instance, is likely to be subjected to pressures and temptations such as never are directed upon an office like that of clerk of court. A state textbook commission, or a board of education charged with responsibility for selecting textbooks,

<sup>8</sup> "Two states, namely, California and Kansas, have taken over the publication of textbooks, but, in general, the policy of state publication of textbooks has not been favored. The following statement was made by one of the leading authorities on school administration.

"State publication of school textbooks in the United States has, from the first, been largely a political issue. There has never been, and is not now, in any American state, any educational demand that the schoolbooks used in the schools be printed by the state. In no case has the proposal come from school administrators or from organized bodies of teachers. To the contrary, the chief opposition to the proposal, whenever and wherever advanced, has come from those responsible for the proper education of the children of the state.

"While the proposal that the state print its schoolbooks has been up for consideration, at different times within the past half-century, in a number of our states, only three states have ever actually put the plan into operation, and in one of these (Indiana) it was undertaken years ago, and then abandoned before much money had been spent on it or much harm had been done to the schools. In California and Kansas the plan is now in operation in so far as the printing of elementary-school textbooks is concerned, and Kansas is beginning the printing of some high-school textbooks as well.\*" Judd, *Problems of Education in the United States*, pp. 117, 118.

\* Ellwood P. Cubberley, "The State Publication of Textbooks," *The Textbook in American Education*, pp. 235-236. The Thirtieth Yearbook of the National Society for the Study of Education, Part II (Bloomington, Illinois: Public School Publishing Company, 1931), p. 119. (Quoted by permission of the Society.)



would be subjected to pressures unknown, for example, to the members of a board of curators of a museum. The administrative structure should be particularly strong at these vulnerable points.

It is believed the setup here suggested for a state board of education is almost as strong as it could be. The state board here contemplated would not only have this duty of approving textbooks, but would also be directly responsible for the success of the whole educational program of the state. This is very important. A high sense of responsibility is perhaps the most precious attribute of administration, and the hardest to achieve. A sense of responsibility cannot be decreed by law. Many subtle factors enter into its composition. Possession of real power and a realization of the impossibility of shouldering blame upon others tend to cultivate this sense of responsibility, particularly in people who are genuinely interested in all the aspects of the work they are doing. To set up a special, separate commission to pass upon textbooks would be to divide responsibility, to vest power in one agency to make very important decisions that might seriously impair the program for which another agency was responsible. This would be greatly to weaken the morale of both agencies. Such a division of power is to break down safeguards rather than to build them up. If the state board of education were to have power to select textbooks, that power would be only one of several very important powers, all of which should be exercised with just one important broad objective in view—the success of the whole program of public education. In this sort of situation concentration of power definitely makes for a keen sense of responsibility.

There are many reasons to doubt whether any state administrative agency should have positive power to dictate with respect to textbooks in the public schools, that is, power to prescribe explicitly. There is also reason to doubt whether local school authorities should be entirely free in the matter. Local school officials are frequently imposed upon shamefully by salesmen representing publishing houses, and because of this they authorize the use of books that are obsolete and otherwise ill-adapted to the purposes to be served. They may be influenced more by the cheapness of a book than by its real worth. On the other hand it is desirable that considerable leeway be permitted to local authorities. Rarely is it true that any particular book is so good that all others should be excluded from consideration.

For these reasons it is desirable that the state department should have only a limited power in this matter. It could prepare lists of approved books from which local authorities might choose. The exercise of such a power would set up adequate safeguards against the in-

roduction of undesirable books, and furthermore would not involve an undue centralization of authority.

A very considerable number of the states today extend financial aid to local areas for purposes of public education. The apportionment and distribution of this aid, in accordance with law, should be the responsibility of the state department of education. Although state money bestowed upon local school districts is properly called "aid," the real purpose of the practice is to equalize burdens and to afford the schools some benefit from newer kinds of taxes which local areas are themselves not able to make use of directly.

For three hundred years it has been the practice in America for areas of local government to maintain schools financed by means of taxes locally imposed. The modern relic of that democratic practice is the tiny school district with its locally elected directors or trustees. These are empowered by the legislature to levy certain definitely limited tax rates against property within the district. Thus schools are supported by local taxes locally imposed and locally collected. Whatever advantages the system may have possessed, there was one weakness in it which has developed to intolerable proportions today. It can be stated very simply: School districts do not have educational burdens in proportion to the value of taxable property within their districts. School districts have educational burdens in proportion to the number of school children who live within the district, and in proportion to the cost of transporting them to and from school. A very poor district, measured in terms of taxable property, may have a greater educational burden to carry than a very rich district.

This has always been true and there was no great harm in the system so long as educational burdens were so light that even poor districts could get along fairly well. But in modern times educational burdens have increased very rapidly not only because of the increase in population but also because public opinion in modern times demands a very much higher quality of public education. The result was inevitable—a great many districts could not keep the pace. Hence the demand that the state treasury come to the aid of local schools and make it possible for all sections of the state to maintain substantially equal educational facilities.

Another difficulty leading to the demand for state aid has been that, although the costs of education have increased by leaps and bounds, real estate has by no means increased in value in the same proportion; and local taxing bodies have had access only to property taxes. Wealth has indeed increased but it has taken forms other than real property. The state has been able to tax these other forms of wealth, but the

local areas have not been able to do so. Thus, if local schools are to benefit from income taxes, inheritance taxes, sales taxes, gasoline taxes, and corporation and business taxes, they can do so only if the state collects them and distributes part of the proceeds in the form of aid.

For these reasons and others too it is certain that state aid not only will continue but will assume an ever-increasing importance in the program of educational finance. State departments of education must be prepared to administer this program of state aid in the best possible manner. To do it wisely and well there must be less of automatic distribution of state funds in accordance with rigid law, and more of the exercise of intelligent judgment. Up to the present time state legislatures have largely put their faith in rigid rules that could be applied by some state finance officer. Thus, state aid could be distributed to local areas in accordance with school population, in accordance with geographical area, that is, size of districts, or in accordance with the assessed value of property in each district. All of these measures are clearly objective and could be applied by any clerk who had the data before him, but none of them is wholly satisfactory. Ideally, state aid should be distributed in accordance with actual need, to the end that educational facilities be substantially equal throughout the entire state. To determine actual need, somebody must make thorough investigations and exercise sound judgment. This must be the responsibility of the state department. The department should be prepared to make comprehensive surveys at frequent intervals and to distribute state aid as it is needed. This would be a very great responsibility indeed. It is doubtful if the full implications of such power and discretion will be realized in very many states for years to come, for it will be prevented by local jealousies on the one hand and by unwillingness to grant such power to a state department on the other. As the simplest way out, some states will prefer to take over full responsibility for the financing and management of public education. But in any event, state departments of education in every one of the states are destined to assume an ever-increasing responsibility for helping finance the local school system. They should be properly organized to assume it.

Considerable discretion has already been vested in state departments in connection with granting state aid as a sort of reward or inducement to local areas to improve their own educational facilities. Thus grants are made if buildings measure up to certain standards fixed by the departments, or if the teachers measure up to certain qualifications, or if the relation between the number of pupils and the number of teachers meets certain requirements, or if certain courses of study are offered,

or if certain facilities are provided. This practice has served a good purpose in that it has provided an inducement to progress, without the exercise of authoritative control from above. But obviously the method has its limitations. The school districts that are most in need are least able to meet the higher standards; and, furthermore, good minimum standards ought to be compulsory and should not hinge upon the desire for a gift in the form of state aid.

Here then is a very large and important responsibility that must center ultimately in state boards of education. They must be prepared to fix standards, enact rules and regulations, and authorize the equitable distribution of state funds that are made available for local schools. The measure of their power and responsibility will depend upon the extent to which state legislatures are willing to put faith in state boards.

No effort has been made here to present an exhaustive survey of the work in the field of public elementary education that should be undertaken by state departments. That can be found in writings that deal primarily with educational problems.<sup>9</sup> The purpose here has been to show the need for integration of the various activities carried on by states in connection with education, and the need for having a well-organized unified agency to assume the responsibilities.

However, one further activity may be mentioned before turning to the subject of higher education. Every state department should maintain a bureau of research even if it is manned solely by one person on part time. Enormous progress is being made in educational research. New methods, new ideas, new ways of doing things are constantly being developed by students in this field. Every state department of education should be in close touch with these developments. If possible, the state department itself should be carrying on some researches and experiments, probably in co-operation with specialists and students in the institutions of higher learning. The extent to which such work can be carried on will be limited only by the funds made available.

### INSTITUTIONS OF HIGHER LEARNING

There is considerable difference of opinion among experts in the field of education and students of government as to whether or not the institutions of higher learning should be under the control of the administrative agencies that are in charge of elementary and secondary

<sup>9</sup> A comprehensive summary of the general powers and duties of a state board of education can be found in Schrammel, *Organization of State Departments of Education*, pp. 150, 151.

public education. If one follows out the idea of integration to its logical conclusion, it would seem that they should be. However, the traditional way has been quite different. Probably one very important reason for this is that in the case of higher learning there has been, from the very beginning, an institution—a building—to deal with, as has never been the case with elementary and secondary education. In the latter case the actual buildings, the little institutions, the schoolhouses, have always been under the direct charge of local boards. This is very significant from the point of view of administration, for the moment there is a building—an institution—to maintain, an entirely new series of problems and responsibilities arise. This is true whether the institution be a tiny one-room schoolhouse for which a couple of tons of coal and a few boxes of chalk must be purchased, or a huge university attended by ten thousand students, which buys coal by the trainload and spends millions for equipment.

From earliest times the state university has been in a sense the state's own schoolhouse. Indeed, most of the great universities of today started their careers in just one unpretentious building—an institution which was the state's own, just as the little rural school belonged to its district. And it meant that in this area of administration there would be problems of institutional management that would not appear in connection with the work undertaken by the state superintendent of public instruction. The difference, more pronounced than ever before perhaps, still exists. A very large, generously supported state department of education might carry on in a big way all the activities suggested in this chapter for such a department, and still it would not have to deal with the problems of institutional management. But in the case of universities, agricultural colleges, and normal schools, the problems of institutional management have loomed so large as to seem to be the most important consideration in connection with setting up agencies of control. Thus it was only natural that when state legislatures came to the point of creating universities, special boards of regents or boards of trustees were put in charge to manage the state's own schoolhouse.

All the familiar methods of setting up lay boards for administrative purposes have been utilized by one or another of the states. Thus there are boards appointed by the governor—either a separate board for each state institution or one board for all of them. There are boards whose members are popularly elected.<sup>10</sup> And there are boards constituted in other ways that sometimes involve the device of *ex officio* membership.

<sup>10</sup> This is the practice in Colorado, Illinois, Michigan, Nebraska, and Nevada.

As might be expected, in the light of what has already been said in this volume many times, there is very little to recommend the device of popular election. Notable success with this scheme in certain states might seem to be impressive refutation of this statement. There can be no doubt that certain elective boards have managed their institutions in such a splendid way as to leave very little room for criticism. Nevertheless the student of administration should not be misled by impressive exceptions to a good rule. A combination of fortunate circumstances may very well bring it to pass that a theoretically bad political institution will become so deeply rooted in wholesome tradition, and prove to be so thoroughly satisfactory, that it seems to give the lie to arguments against that kind of institution. Very high-minded and capable men may be elected to a board of university trustees. They may do a splendid piece of work. Public opinion may be cultivated to such an extent that it virtually comes to pass that inferior people find it quite impossible to get elected to such a board and so cease to try for election. An indefinable, intangible, but nevertheless a very high standard of qualification for board membership comes to be applied essentially through public opinion and tradition.

These subtle, elusive, indefinable traditions are precious beyond measure. They are more valuable than all the constitutional provisions and statutory requirements that could be compressed into a whole row of books. But no man knows how to bring these traditions into being. In their early stages they are very easily destroyed, but when they become deeply rooted they are irresistible. Thus, where an elected board of trustees has become so deeply rooted in the esteem and confidence of the electorate that undesirable people do not even seek to be elected, and when the reputation of the board for integrity and high purpose has become unassailable, it would be very unwise to advocate reorganization even in accordance with thoroughly tried and tested principles of administration.

But this situation is exceedingly rare and there is no known way of systematically bringing it to pass. Furthermore, good traditions may just as easily, or perhaps even more easily, grow up about a political institution or administrative agency which *at the outset* conforms to the best-known principles. Not only does the elective board not thus conform, but even at its best it tends to perpetuate and aggravate certain undesirable conditions. These spring from the spirit of aggressive independence. Where there is only one state institution this trouble does not become serious. Where there are several, and where each is under the direction of a separate board, the trouble is sure to become a major problem for the legislature. The institutions inevitably be-

come rivals for legislative support. Those in charge are compelled to resort to political tactics that are most distasteful to them in order to win the support which they truly believe their institution deserves; thus the vicious circle of degeneration begins. Able men who detest such political machinations gradually disappear from the board's membership. Their places are taken by others who are much less desirable persons to have on the board but who are not repelled by having to participate in the partisan political practices and rivalries that so insidiously develop.

Of course, these observations about the evils that appear when institutions are controlled by separate boards apply to both elective and appointed boards. The evils are likely to be the more aggravated in the former case, because the fact of popular election definitely tends to inculcate a spirit of aggressive independence in the best of men. In all honesty and sincerity of purpose they make a virtue of stubbornness and uncompromising determination; that is very bad indeed for administration.

It has at times been argued that the best interests of a state university may be served by putting it under the direction of an elective board and guaranteeing to it, by law, an income to be derived from a fixed millage levy. The idea is to make the university to a very high degree independent even of the legislature itself. This device is thought by some to be a good safeguard against evil political forces that might become entrenched in the state house. However, there is nothing to recommend it from the point of view of good administration. It would defeat the most elementary purposes of sound budgeting by introducing a fixed element that would have no relation to the changing needs of the state or even to the needs of the institution itself. Furthermore, such a device would be sure to render unworkable, in a very large and important area, many of the desirable practices discussed in connection with purchasing, personnel, and accounting. A fair measure of independence for administrative agencies is desirable in that it tends to promote a sense of pride and self-respect and a desire to achieve; but it is fatal to set up arrangements that will make it possible for administrative agencies to defy the legislature effectively.

The weakness in having separate boards, either elective or appointive, quickly became apparent as the number of institutions of higher learning increased. No state maintains two state universities, though in some cases branches of the university are maintained in various cities. But normal schools and colleges of agriculture and of engineering have developed in great profusion. In one state there are

more than a dozen such institutions. Many states have three or more. There is always likely to be considerable political pressure to increase the number of such institutions, though usually the pressure comes from local interests. And political considerations make it very difficult indeed to abandon an institution that has once been established. Powerful vested interests quickly develop around even a feeble little institution.

The best opinion among educators seems to be definitely against the multiplication of institutions of higher learning and rather in favor of consolidating them where a considerable number do exist. This is gratifying because the student of government administration is likely to hold the same view. That there should be only one state university is a proposition hardly open to dispute. Whether the state agricultural college, if there be one, or the college of mechanic arts, should be on the same campus as the university or located in a different part of the state is a matter of considerable dispute. And there is very great difference of opinion as to just how many normal training schools or teacher training colleges there should be.

Well-established, well-attended institutions certainly ought not be abolished or merged with others unless there are impressive reasons for doing so. But curiously enough it is the very success of some of the agricultural colleges and normal schools that lead some observers to object to them. Being successful, they tend to establish new courses and departments which were not originally intended, and thus they overlap the educational services already provided by the university. Should an agricultural college develop and expand its offerings in the field of home economics or should that subject be left to the university? Should the university minimize home economics and leave it to the agricultural college? Should the state be called upon to maintain two departments of engineering? Where should such subjects as journalism, music, graphic and plastic arts, dramatics, or physical education be offered? And should institutions other than the university offer graduate work leading to the higher degrees? Duplication of equipment, services, and costs quickly becomes apparent to the most casual observer, but there are often important considerations that heavily discount appearances.

No attempt can be made here to examine into all these matters. It may be presumed that students of administration will definitely be in favor of consolidating and cutting down the number of institutions of higher learning in every case where expert opinion in the field of education may tend to justify it. It may also be presumed that the student



of administration will be opposed to having the state institutions governed by separate boards, and will be in favor of having all the state institutions of higher learning brought under the control of one state board whose members will be appointed by the governor, subject to the principle of overlapping terms as suggested earlier in this chapter.

The idea of "adequate representation" of various interests on an administrative board is most interesting. Should a board of health, a board of education, a board of public welfare, or a board of highway commissioners, be representative in the sense that geographic areas or well-defined elements in the population would be represented in its membership? Many capable students of administration repudiate the idea altogether. They hold to the view that if there is to be a lay board at all, then any respectable citizen may be looked upon as truly representative in the best sense of the term, and that if members are conscious of the fact that they are supposed to "represent" the mining districts, the urban population, women, the foreign born, the university alumni, the endowed colleges, or the farmers, they cease to have a whole-souled interest in problems of administration and the determination of broad-gauge policies with which they ought to be concerned. The people whom they are supposed to represent constantly put pressure upon them and never let them forget their special interests.

On the other hand a relatively small board can very easily become insulated against the ideas and desires of the people in certain sections of the state or of certain defined groups in the population simply because no one who is able to give expression to these points of view sits on the board. One very important feature of the relatively large lay board in administration is that it strikes a happy balance between two extremes. No formal rules can be laid down. Indeed a rule is likely to be unfortunate since it tends to accentuate particularism and to instill in the members to whom it applies an undue sense of their representative character. Thus it would usually be unwise to guarantee by law the representation of definite groups on lay boards. Nevertheless, the idea of fair representation should be present in the mind of the governor who makes the appointments. Not only should he be interested in trying to satisfy various sections and groups in order that they may not be obstructive because of resentment at inadequate representation, but he should also realize that the lay board affords a splendid opportunity for him to stimulate the interest of groups that otherwise would lie dormant and unconcerned. Let farmers be gratified to see a farmer sitting on the board of education or the board of public welfare. Let labor see one of their leaders sitting on a board of public works, in-

timately concerned with its great undertakings. Let the western counties or the mining districts feel that they have not been entirely forgotten in organizing boards in the administrative structure.

Right here lies a very subtle problem in the art of statesmanship. A shrewd, intelligent governor—a person who is fit to be governor—will know how to deal with it. No fixed rules can be devised to guide him. Fixed rules would paralyse him and actually defeat statesmanship. Throughout a period of years, broadminded and skillful governors can strengthen administration tremendously in the matter of appointments to boards, always keeping in mind the *idea* of representation without making a fetish of it.

A board in charge of state institutions of higher learning does not differ from other boards in its susceptibility to this art of statesmanship. Alumni of the state university should not be thought to dominate it. The small private colleges should not feel that their interests are not adequately presented. People active in the public schools, and those who are interested in the junior college movement, are the sort of people who are deeply concerned with the policies pursued by the institutions of higher learning. Of course they cannot all be represented all the time. The purpose of these illustrations is merely to show the uses of the lay board in this area of administration.<sup>11</sup>

It is apparent that although the problems of administration may differ somewhat, so far as size and character of personnel are concerned, substantially the same kind of board is indicated in the case of public education as in the case of the management of the institutions of higher learning. Furthermore, the institutions of higher learning are in a very real sense a definite part of the system of public education. An enormously large and steadily growing number of students go straight from the high schools into the state universities. The policies of the higher institutions are of very great importance to the public-school people, and vice versa. This relationship is certain to

<sup>11</sup> "The board is solely lay in about a fourth of the states, and the state superintendent is the only professional member in about ten more. The argument for professional members is that they represent important elements in the state educational situation, which the commissioner might overlook or weigh imperfectly. But there is also the danger that they may act like aldermen in a city council, representing certain interests to the exclusion of all else. In that case they promise to introduce contention into the affairs of the board. Lay members are less likely to hamper the commissioner on the assumption that they themselves possess technical information on the problems that arise. So far as professional interests deserve to be consulted, they can be consulted by the commissioner on the outside. A combination of lay and professional, with lay members in the majority, appeals to many as a good arrangement. It should be observed, however, that such is likely to result, even if the law does not establish any qualification." Cook, *Federal and State School Administration*, p. 151.

become steadily more intimate, and there is no better way to bind these two related areas of public administration into one unified whole than to place them under the control of one suitably organized board.<sup>12</sup>

The apparent difference in the character of the administrative problems that appear in these two fields has already been touched upon at some length. The distinctive thing about administration of the institutions of learning is the omnipresence of strictly institutional problems, that is, purchasing, personnel, bookkeeping, and management. As the institutions have grown these problems have become enormous and tend to overshadow other matters and to monopolize the time and attention and interest of the governing boards. Boards of trustees in charge of institutions of higher learning tend to become deeply engrossed in business problems. They are concerned with the handling of the institution's money and property, with the purchase of supplies, and with the negotiation of contracts having to do with the development of buildings and grounds. They are concerned with financial reports and the organization and methods of the business offices of the institution. In a word, the tendency is very marked for large institutions of higher learning to take on the characteristics of a large business house, and in such cases the boards in control become boards of business directors.

These business aspects of administration must not be minimized; they are very important indeed, but nevertheless they must remain of secondary importance. Universities do not exist for the purpose of building field houses, managing real estate, and purchasing trainloads of supplies, yet those who exercise ultimate authority over the institutions are often chiefly concerned with those problems. This is to lead in the wrong direction. A board in control of an educational institution ought not to be primarily a board of business directors, no matter how efficient and capable it may be in that connection. There is nothing new about this problem. It has existed in tiny rural school districts just as it exists on the campus of a great university boasting a twenty million dollar plant. The directors of the tiny district may be engrossed with such things as putting in a supply of cordwood, repairing the roof of the schoolhouse, or buying a secondhand school bus. This is an important aspect of administration to be sure, and if it is not properly handled the entire program will collapse. But the adminis-

<sup>12</sup> An elaborate plan for the internal organization of a state department of education is to be found in Schrammel, *Organization of State Departments of Education*, p. 154. The institutions of higher learning are embraced in the department.

trative machinery of the state ought to be so organized that the main purposes of the state will remain out in front, as it were, and business services be relegated to their proper sphere.

To this end it is proposed that state boards in control of institutions of higher learning—be they independent boards of trustees or all-embracing state boards of education—have very much less to do with business and institutional management than has been true in the past, and that they devote a great deal more attention to educational policies and the main purposes for which the institutions exist.

The state bureau of purchase, the bureau of personnel administration, and the state finance offices could to a very considerable extent very properly relieve the boards in control of institutions of responsibility for business management. To do this would no doubt seem to many of those who now sit on these boards to take away from them the chief function for which they exist. And that in itself is eloquent testimony concerning what has come to pass in this area of administration.

#### A FULLY INTEGRATED DEPARTMENT

However, the scope of power and influence proposed in this chapter for a state board of education is certainly great enough for any administrative board to possess, even without the business and managerial features of administration included. And if the state board of education were to assume responsibility for the institutions of higher learning it would appoint the presidents and chief officers of the respective institutions, receive their reports, and determine major policies to be followed. It should be clear that the superintendent of public instruction would have nothing whatever to do directly with the institutions of higher learning. But he and the various institutional heads would be co-ordinate officers, as it were, responsible in similar degree to the same authority—the state board of education. No doubt the board would function through small committees and thus certain members would become much more familiar with the problems of higher education than others whose primary interest would be focused upon the elementary or secondary field.

Thus there is proposed in this chapter one unified area of government administration in which all the agencies concerned with it are properly integrated under a powerful board. This board would enjoy power to determine educational policies to a degree that clearly suggests a quasi-legislative function. It would appoint the principal executive officers in this area and would hold them strictly accountable. It would have full control over the educational budget, subject only to

the acts of the legislature, which would, of course, set out the main divisions. These very impressive powers are clearly calculated to attract very able people—people who would be truly interested and who would feel that the power, authority, and prestige associated with a position on the board was commensurate with the time and energy the position would require.

## CHAPTER XI

### PUBLIC WELFARE

THE phrase "public welfare" has come to have some new implications in political science. Government has always carried on some of the services now included in public welfare administration, but in the last twenty years it has undertaken a large number of new and unfamiliar services that may very properly be embraced in the term "welfare" and may be looked upon as a logical expansion of the state's responsibility. It would have sounded strange a few decades ago to have referred to the management of a penitentiary as welfare work. And even today there are people who do not readily appreciate the essential relationship between the problem of supervising a boy's reformatory and the administration of a widow's pension law. The relationship lies in the fact that both activities are very definitely connected with social welfare, as are numerous other activities in which government might properly engage. Things are being done today in the field of psychiatry and in the hospitalization of the indigent, for instance, that were undreamed of a generation ago, and yet these new activities very definitely tie in with such old familiar responsibilities of government as caring for the insane and maintaining penal institutions.

#### BAD INTEGRATION OF WELFARE AGENCIES

Examples of bad integration abound in the broad field of public welfare. There are at least two important reasons that partly explain this. One is that at the time new services are set up the relationship between the new service and some old service has seemed to be so remote or so completely nonexistent that to have tied the services together through administrative machinery would have seemed directly contrary to sound principles of integration. Thus separate and distinct agencies of administration have been set up to meet the new demand without a realization of the underlying connection between the two activities. The other reason is that old services become so deeply rooted that it is much easier to set up a new and independent agency than it is to make the adjustments implied in sound integration. The result is that today we see parole boards, child welfare research stations, sep-

arately managed hospitals for the epileptic, penitentiaries, industrial schools for girls or for boys, bureaus of mental hygiene, commissions for the blind, old-age assistance boards, and various other agencies going their separate ways, largely oblivious to the common denominator underlying all of them.

Nevertheless, the common denominator is easily discovered. Failure to administer relief intelligently leads to broken homes, broken homes lead to crime, crime leads to the reform schools and penitentiaries. Disease—epilepsy, tuberculosis, mental deficiency—leads to need for relief. Failure to administer a widow's pension law wisely leads to juvenile delinquency which in turn leads through the courts to the office of the parole board. Intelligent administration of parole, or of an old-age assistance program, or of aid for the blind, may obviate need for relief, restore a broken household, save children from neglect and undernourishment, reduce the number of inmates in hospitals and asylums. Work being done in psychopathic hospitals and child-welfare research stations penetrates into all these other areas. Indeed, the inter-relationships between all these activities are so numerous and intimate and complex as to defy comprehensive analysis.

In the face of this situation the problem of the student of government and administration is at least clearly indicated. He should endeavor to discover and identify those services which the state performs, or should perform, in the broad realm of public welfare, and devise for their administration governmental machinery that promises to come nearest to making possible the fulfillment of the fine objectives of social welfare.

#### PENAL INSTITUTIONS ILLUSTRATE POINT

Every state must maintain a penitentiary. Of course, convicted criminals might be held in county jails. But it has long been recognized as the proper function of the state itself to maintain a penal institution to which criminals convicted of major crimes may be sent from every community in the state. A penitentiary is usually in direct charge of a superintendent, often called a warden, who may be appointed by the governor for a fixed term with or without the consent of the senate. Or there may be a board of laymen in charge of the institution, in which case the board selects the warden.

Unfortunately few states have found it possible to serve their need with a single penal institution. The capacity of the original institution is ultimately reached and the state is obliged either to enlarge it or to erect a new one. There are many considerations pointing to the latter

alternative, some good, some bad. Business interests in a given community usually like to have state institutions set up in their midst, hoping to profit thereby. A new institution means more lucrative positions to be filled. On the other hand, a new institution makes it possible to accommodate various sections of the state more conveniently. But a more important consideration than any of these is that it makes possible a certain degree of experimentation, an opportunity to create a different atmosphere, to try new methods of management, and to classify criminals to some extent in an effort to give them the sort of care and treatment best suited to their needs.

It is in response to this urge that so-called reformatories and industrial schools have come into being, one after another, in nearly all the states. The authorities might have followed the practice of merely enlarging the original penitentiary or of building another one just like it. However, both for good reasons and for bad, some degree of differentiation has been the rule. But in either event the problem arises whether or not there shall be some kind of organic connection between the two or more penal institutions that are ultimately established. Shall all be put under one common administrative authority, or shall they be separate and independent?

There is only one proper answer to this question. All the penal or correctional institutions of the state should be put under one centralized administrative authority. Only thus will it be possible to effect the co-operation implicit in any enlightened plan for classifying prisoners and dealing with different types in different ways. It is usually considered desirable to segregate as far as possible youthful first offenders from hardened old recidivists. Some prisoners are to be trusted with much more freedom within the institution than are others. It used to be supposed that persons guilty of the most serious offenses needed to be more strictly supervised and guarded than those convicted of lesser offenses. Thus sometimes institutions were differentiated on such basis as the age of the offenders, the character of the offenses committed, and the terms for which the offenders were committed. The original penitentiary might be reserved for men above a certain age or for those sentenced to more than ten years. The so-called reformatory would be reserved for younger men or for those who committed lesser offenses.

Such classification was experimental, and thus all to the good, but these bases of classification are now recognized as having little value. A middle-aged murderer may prove to be far more docile and easier to deal with than some incorrigible boy who has merely stolen an automobile. The nature of the offense, the age of the offender, and



the term of years for which he has been sentenced may have little or no bearing upon the problem of how best to deal with him while he is in the custody of the state.

Society has been shockingly backward in this matter of dealing with criminals. We have made more effective efforts to learn how to deal intelligently with swine, cattle, dogs, and race horses than we have with the various types of men who are committed to penal institutions. But students of the problem are making great progress. State administrative machinery for the maintenance of penal and correctional institutions should be so devised so as to make possible all kinds of experimentation and easy adaptation to the newer and better ideas of how best to cope with this very serious social problem. One does not need to be a sociologist or a penologist or a psychiatrist to grasp this point and to see, in general outline, what needs to be done.

In the first place, as stated above, all the penal and correctional institutions need to be under one common authority. Ordinarily this would include not only the penitentiaries for various categories of offenders but also the reformatories for men and for women, and the trade schools of a penal character, that is, institutions to which offenders are committed by court order as a penalty for some offense against the law. Some states are experimenting with semi-penal institutions for very young offenders, where every effort is made to minimize the penal character of the institution and to emphasize the educational aspects. These institutions should be grouped with the other institutions here under consideration.

With all these institutions thus grouped together for purposes of administration it would be possible for those in charge to adapt their policies constantly to the best knowledge available. Not only could offenders be classified and segregated on the basis of much sounder considerations than age, nature of offense, and term of imprisonment, and be dealt with accordingly in various types of institutions, but the way would also be clear to open up entirely new methods of dealing with offenders.

There are indications that new and revolutionary ideas along these lines are about to come into vogue. A very impressive number of able students is even now of the opinion that penalties should not be rigidly fixed by law, that courts should merely pass upon the question of guilt and not impose penalty at all. The idea is, of course, that imposing a uniform, fixed penalty to every person who commits a specified offense is not dealing with the problem intelligently. To impose a sentence of ten years for forgery on a young man who is guilty of a first offense may be to destroy a character otherwise redeemable and to

turn out a warped, vicious, thoroughly bad potential criminal at the end of the ten-year period. To impose the penalty for a similar offense on another type of individual may make a bad matter no worse. The offenses are similar but the remedies proposed are very different indeed because of the variety of circumstances, chiefly involving personality and character, of which a rigid law cannot take account.

It will be a long time before society will be willing or prepared to deal with criminal offenders in the way the medical profession deals with sick people—to adapt correctives and remedies to suit the requirements of the individual case. If the doctors blindly applied fixed remedies to certain ailments, without taking into account the individual differences of patients, many more fatalities would be recorded. In the field of penology what happens is not more fatalities but the ruin of an untold number of lives, tragic miscarriages of justice, and the destruction of characters that might have been saved. But although it will be a long time before this approach to the problem of dealing with offenders can be developed to any great extent, there is sure to be much experimentation with it, especially in connection with probation and parole. State administrative agencies set up for the management of penal and correctional institutions should be so organized as to make possible this sort of progressive experimentation.

#### A WELL-INTEGRATED DEPARTMENT

A board with quasi-legislative powers is very clearly indicated. The legislature itself is in no position to deal with all the important problems of policy that are sure to arise if the state undertakes to keep abreast of the times in the matter of caring for criminals, rehabilitating them, and getting them back into society as respectable and useful citizens. A board with extensive power to make rules and determine policy could respond to the new and progressive trends. The legislature would make lump sum appropriations for the penal institutions and enact laws concerning their management in very broad and general terms. The board of public welfare would assume all further responsibility, appoint resident superintendents, determine policies, and apportion funds within the limits fixed by the act of the legislature.

This sort of arrangement would indeed mean that the legislature itself would be letting some of its own power slip into the hands of an administrative board, although, of course, it could be withdrawn at any time. On the other hand, it would involve the placing of effective power where it could be used to the best advantage of all concerned. If the board of public welfare were composed of from nine to twelve

persons it would be large enough to afford an opportunity for adequate representation, and also large enough to provide a slow turnover in membership under the system of overlapping terms. The board would appoint a director of public welfare who would have full administrative control over all the activities of the department.<sup>1</sup>

The problem of securing adequate representation on a board of pub-

<sup>1</sup> There is difference of opinion about this matter among authorities in the field of public welfare. The following quotations reflect the opposing views:

"It is necessary to have a central agency for the purpose of co-ordinating all the institutional and departmental activities and formulating a continuous uninterrupted welfare policy. That agency, in my opinion, should be a bi-partisan board of members appointed for definite terms, of which not more than one expires in any one year. Under this plan there would always be an experienced majority to carry on a continuity of policy and work and to stabilize ideas and notions of new members." Sophonisba P. Breckinridge, *Public Welfare Administration in the United States* (Chicago: The University of Chicago Press, 1934), p. 611.

"The relative merits of the board control and one-man control systems of public welfare administration will doubtless continue to be the subject of debate. The report of the White House Conference on Child Health and Protection in 1932 states: 'The organization of a department of public welfare should provide for continuity in service and policies as well as for centralized executive responsibility. Administration vested in a lay board with authority to appoint the director offers greater safeguards than any other form, as few of the states with directors of all departments appointed by the governor have developed a tradition of continuing service and professional appointment of the directors and division heads.' Under the board control plan New Jersey has been highly successful in excluding partisan political considerations from the administration of a progressive, well-planned welfare program by qualified executives. The experience of certain other states employing the one-man control plan leads to the conclusion that one-man control, while perhaps strengthening gubernatorial responsibility, affects adversely the quality of directive personnel and tends to subject welfare policies to partisan political influences." Paul T. Stafford, *State Welfare Administration in New Jersey* (Trenton: State Department of Institutions and Agencies, 1934), pp. 45, 46.

"The question of how public welfare departments should be administered was put . . . to the members of the Government Research Conference, which comprises the great majority of those agencies engaged in study of the science and art of public administration, and to another group of persons representing mainly those who had had practical experience in public welfare administration. Of the nineteen members of the government research group replying, fifteen believed that centralization of authority and responsibility should be secured through the appointment of the welfare head by the executive head of the government, governor or mayor. Only four favored a board for administrative purposes. It was the general opinion of the members of this group that 'unpaid boards, where the executive officer is chosen by such unpaid board, are not the most efficient type of organization, tending as they do to place a buffer between the chief executive and the departmental executive.' Of the eighteen replies received from the other group, that is, those who had had practical experience in public welfare administration, sixteen strongly favored a board. . . . Advocates of 'one man control' have not singled out the boards of control of state institutions for attack, but they find ample evidence that continuation of long term, overlapping boards of administration whether of public welfare, health, highways, finance or what not, is incompatible with any workable plan to make a governor in fact what he is now so often in name only, a chief executive. The governor must, if he is to represent the people as he is supposed to do, appoint his administrative heads. He must have men about him who are responsive to him and in accord with the administrative policies which he is pledged

lic welfare would not be quite the same as that of providing for adequate representation on a board of education. In the latter case it was to be observed that there were various well-defined interests that deserve to be considered, if not always literally represented on the board—the interests of the university alumni, the graduates of small private colleges, the public-school people, and those concerned with rural education. In the field of public welfare there would not appear to be any particular group or segment of the population deserving special consideration. In making appointments a governor would desire to select genuinely interested people of ability and character. Personal interest, enthusiasm, and broad-mindedness are qualities that are exceedingly difficult to measure, but they are very important, especially in the administration of public welfare. Those who would sit on a board of public welfare should be people of vision, deeply and intelligently sympathetic toward the unfortunate and underprivileged, open-minded toward experimentation in the field of social welfare, and yet with their feet solidly on the ground. In one sense a governor might feel himself to be quite free in the matter of making selections, because these requirements are extremely vague and indefinite. Yet on the other hand, if he took these suggested qualifications really seriously, he would find it a very difficult problem to discover suitable appointees.

Too often the tendency has been to appoint people to boards in charge of institutions because of political reasons. And altogether too often those who have been appointed have been chiefly concerned with contracts, the purchase of supplies, business management, and the appointment of workers to jobs about the institution. This comment does not necessarily imply that there has been evil motive. Circumstances have tended to make the members of these governing boards

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to carry out." C. E. McCombs, "State Welfare Administration and Consolidated Government," *National Municipal Review*, XIII (1924), 462, 465, 466.

"The following are some of the objections to the law; first, in Ohio the governor holds office for two years. The director of public welfare may not hold office longer than two years. A reasonable continuity of policy so essential to the development of welfare work cannot be guaranteed where the head of the Public Welfare Department is likely to be changed with changes in administration. This same argument will apply to the director of public health; second, a brief and uncertain tenure of office will not attract men of great ability and men of experience and technical training to enter this form of state service; third, if appointments are made by governors only men from the state are likely to be appointed. The position of director of public welfare or director of health should go to the most competent men to be found in the country or in the world; fourth, where high salaried men are appointed by the governors political pressure will be applied to secure appointments of favorites, not only as directors of departments, but also as subordinates in the departments." Breckinridge, *Public Welfare Administration in the United States*, p. 608.

business-minded, as has been true in the case of the boards that govern educational institutions.

This tendency can be corrected. Much of the responsibility for purchase of supplies can be assigned to the central bureau of purchase, and much of the responsibility for appointing workers can be delegated to the bureau of personnel administration. Doing this would tend to leave the board of public welfare free to devote time and attention to the main task, that is, the consideration of problems and policies relating to public welfare, and not to the problems of building construction, purchase of supplies, and hiring workers, which after all are problems wholly incidental to the main task.

### BUREAUS IN THE DEPARTMENT

Within the department of public welfare there would be a bureau or division of corrections that would embrace all the penal and correctional institutions. The chief of this bureau, selected by the director of public welfare and responsible to him, would have direct supervision over all these institutions. The resident superintendents or wardens would be distinctly subordinate, because one of the main purposes of this type of organization would be to discount or to minimize the independent character of the institutions. Authority, power, and responsibility should be concentrated on a higher level than that of any one of the institutions. The chief of the bureau of corrections would view all of the institutions merely as convenient instruments to accomplish one broad purpose—the custody and reconstruction of people committed to the institutions. His office should have power to place them in the institutions where they properly belong, power to move them from one institution to another if circumstances made it seem desirable, and power to shift staff members and other employees from one institution to another.

Under this arrangement the importance of a given institution would tend to be minimized, as it should be. On the other hand, the peculiar character of the treatment of convicted criminals, as distinct from other problems of public welfare, would be definitely emphasized. Caring for this class of public charges would be clearly differentiated from the problem of caring for the insane or for orphans. The structure of administrative agencies set up for purposes of administering public welfare ought to make clear these various distinctive fields. To do this is to effect unity at precisely the points where unity needs to be effected. A group of correctional institutions needs to be closely co-ordinated, it needs to work in harmony as do the fingers of a hand.

To endeavor to effect the same degree of unity between a penitentiary and a state tuberculosis hospital is to miss a very important point; it is to emphasize superficial aspects of similarity—supplies, business accounts, and jobs.

In addition to having control over the penal and correctional institutions, the bureau of corrections would also be responsible for the administration of parole. There might well be a small board of three members to exercise the quasi-judicial function of passing upon applications for pardon and parole. State laws concerning parole are quite strict and no doubt they should be. The time has not yet come when a large measure of administrative discretion in turning convicted criminals back into society would be tolerated. It may come to pass some day that administrative officers will be accorded full responsibility for releasing criminals. The idea is thoroughly sound. But there are at least two very good reasons why it is not at all feasible as yet. One is that public opinion is by no means prepared for it. Indeed, there are plenty of indications that public opinion is rather hostile to the idea of permitting parole boards to exercise the very limited power they now have. The system does not stand high in public confidence. The other reason is that the problems associated with the supervision of those on parole are not yet well enough understood, nor are there yet to be found enough competent people to undertake such supervision. The system is still in a very early experimental stage.

Nevertheless every state should have a parole system and there should be administrative agencies of the best possible sort to operate the system.<sup>2</sup> The law would clearly state what classes of offenders might be admitted to parole, and under what circumstances. This law would be considerably amplified by rules which the board itself would find it expedient to adopt.<sup>3</sup> Those rules would prescribe conditions

<sup>2</sup> "The Board of Paroles, in short, should as far as possible be removed from politics and should be as independent as the faculties of our state universities. It should have entrusted to it, not merely the duty of passing upon and granting or refusing the parole, but of the supervision of the convict while on parole. To it should be entrusted the control and appointment of its own servants and employes. It should have the power of discharging a dishonest or incompetent parole officer without the necessity of asking permission of any other political body or of any other political officer." Illinois Committee on Indeterminate-Sentence Law and Parole, *The Workings of the Indeterminate-Sentence Law and the Parole System in Illinois* (Chicago: [n. p.], 1928), p. 59.

<sup>3</sup> "The Legislature of the State should give to the Board powers to decide upon the fitness of a prisoner for release from an institution on Parole. Persons should be selected for membership on the State Board of Parole, not because of their partisan interests but because of their experience, integrity and intelligence. Members of a Board should give full time to their duties. The Board should consist of five members, at least one of whom should be a woman. In the membership of the Board, there should be a penologist,

under which hearings would be conducted and would lay down rules of conduct to be observed by those enjoying parole. It would impose very specific obligations upon those who agreed to assume responsibility of sponsorship. Usually it is required that one who is granted parole must have available a job which has been approved by the board. The employer must agree to numerous stipulations involving an obligation to make systematic reports and to exercise a rather close supervision over the daily life of the one paroled to him. Sometimes it is required that the person paroled must have some responsible sponsor other than his employer. He is subject to rules of conduct that frequently forbid him to leave the state, or even the county or city in which he resides, unless he obtains special permission. He may be forbidden to drive an automobile or to enter places where intoxicating liquor is sold. Such codes of rules dealing with personal conduct are sometimes very elaborate, perhaps needlessly so, and tend to humiliate the victim and to destroy his self-respect.

Boards of parole are continually experimenting in this connection. It would be ridiculous and perhaps unjust to apply all rules strictly and to revoke parole because the victim innocently happens to enter a cigar store where liquor is sold. On the other hand, the customary rule forbidding the drinking of liquor of any sort ought to be very strictly enforced, and the rule forbidding persons on parole even to ride in automobiles may be very important indeed because so many succeed in escaping supervision by this means. As said before, all these problems associated with the actual administration of parole are relatively new, and there must be much experimentation in connection with their solution. Boards must move slowly and with caution.

Furthermore, it is much easier to pass judgment upon the desirability of granting a parole than it is to administer the system after the applicant has been released. It should be the business of the board to adopt rules and regulations and to pass judgment on applications. It should be the business of a staff of inspectors and supervisors under the direction of the chief of the bureau of corrections to maintain surveillance over those placed on parole. This, of course, is the weakest point in the system.<sup>4</sup> It may be determined that an applicant is worthy

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a lawyer, a physician or psychiatrist, an educator and a social worker. The term of appointment should be five years with one re-appointment. The term of one member should expire each year." John Philip Bramer, *A Treatise Giving the History, Organization, and Administration of Parole* (New York: The Irving Press, 1926), p. 47.

<sup>4</sup> "It is indeed quite clear that the Board of Paroles should have exclusive charge, not only of the act of paroling, but of the management and training of the parolee. The success of any parole system depends entirely upon the wisdom and justice and intelligence that is shown, not only in the granting or refusing of the parole, but in the care of the convicts after they have been released from the penitentiary. The parole

to be trusted, but it must be kept in mind that he has some weaknesses of character or he would not be in prison. If, therefore, the supervision to which he is subjected is either unintelligent or inadequate, the chances are that he will soon again become the victim of his own weaknesses, violate parole, and not only bring retribution upon his own head but tend to bring the whole system into ill repute. This has happened so often that a great many people are uncompromisingly against parole of any sort.

Few people realize what a huge and difficult undertaking it is to exercise adequate supervision over several hundred or several thousand people on parole and scattered about throughout the state. And fewer still appreciate how important it is to have the work of supervision performed by people who know how to do it intelligently. Altogether too frequently parole officers are appointed for political reasons. They may be honest and respectable people, but woefully incompetent and unfitted to exercise intelligent surveillance over a person on parole. It is an extremely delicate task which calls for qualities of character and personality that are not at all common. Many a parole agent finds the task quite beyond his abilities, and he takes refuge in making superficial routine observations and stereotyped reports. Many a prisoner breaks parole because he has not been subjected to adequate, intelligent, and sympathetic supervision. In a sense the state owes him all these things. It is not fair to say that he should behave himself in the absence of adequate supervision. It is already apparent that he lacks the self-control that characterizes the ordinary law-abiding citizen. All the circumstances connected with parole impose upon him a standard of conduct higher than that which is observed by the ordinary citizen, and this in spite of the fact that he has little ability to resist temptation. No wonder many of them fail in such an unreasonable test. The victim needs to be supported, and protected against his own weaknesses from the moment he is released on parole. For his own good and that of society he should be under effective, intelligent supervision. How to obtain competent parole agents is the problem.

In this matter the bureau of personnel administration should be particularly useful. This agency should draw upon all its resources and make use of every device known to students of the problem in order to secure for these positions the best people to be had. Probably in no other field of government service are qualities of character and per-

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officer is one of the most important units in the system. He should not be the political agent or political appointee of any Governor or of any political board." Illinois Committee on Indeterminate-Sentence Law and Parole, *op. cit.*, p. 58.



sonality more important than in this.<sup>5</sup> At best these qualities are hard to measure, and it is difficult to get people of proper qualifications to apply for positions in this service. Seldom is the pay high enough to attract them, and the load which they must carry is usually so great as to make the service unattractive. It is not that the parole officer is called upon to work harder than he ought to be expected to work; it is rather that he is expected to look after so many cases that he cannot deal with any of them as he knows they should be dealt with. He is compelled to spend a great deal of his time travelling from one place to another, making perfunctory calls upon the men on parole and upon their sponsors, asking a few hurried questions, making a few superficial observations, and dashing on to the next case. Thus he fails to uncover significant facts, misses an opportunity to talk with one of his charges concerning problems that are annoying him, neglects to adjust difficulties that may make all the difference in the world to the man on parole, and the solution of which might mean the difference between success and ignominious failure. Thus parole breaks down because of bad administration and not because the system is bad.<sup>6</sup>

It is sufficiently clear that adequately administered parole must be

<sup>5</sup> "If these parole officers and investigators are appointed by the Governor or any political organization or department, and if their office is considered a reward for political services, not only will they be half efficient, not only will they at all times be liable to corruption, but three-fourths of their time will be spent in obtaining votes for their chief or for the members of their political organization rather than in watching over and caring for the parolee. Even, as is now perhaps often the case, the parolee himself is led to believe that it is his duty to aid the political fortunes of his custodian and of his benefactor, and to do what he can to obtain votes from his associates, and often in the underworld, for these persons." Illinois Committee on Indeterminate-Sentence Law and Parole, *op. cit.*, pp. 58, 59.

<sup>6</sup> The following quotations show how intimately the administration of parole is related to other functions of a department of public welfare. It would seem to be undesirable to have a board of parole outside of a department of public welfare.

"Can we reasonably expect any large measure of reformation and preparation for a future life of freedom when, by criminal neglect or equally criminal cowardice and selfishness, we allow eighty-five per cent of our convicts at Joliet to pass their time in idleness? Would any man believe that two or ten years spent in idleness under the constant scrutiny of a guard who, himself, is little more than a prisoner, is a proper means of training and of education? Can this man be expected to make good on parole or, if not paroled, after his term has expired?

"The Board of Paroles has no responsibility for, or the control over, the conduct of our prisons. Yet it has to deal with the finished prison product. Every deficiency in prison management, therefore, makes its task the more difficult." Illinois Committee on Indeterminate-Sentence Law and Parole, *op. cit.*, p. 63.

"Parole functions are not police functions; nor do paroling and parole supervision usually develop their greatest possible usefulness when closely identified with penal institutions. Neither does a separate board of parole appear, as a general rule, necessary. Where a board is preferred for the granting of paroles, may it not be feasible

expensive. It is extremely difficult to induce a legislature to appropriate the amounts necessary. However, the savings to society are very impressive even though it is difficult to measure them objectively. It is comparatively easy to estimate the savings to be effected by reducing the number of inmates in penal institutions, and it is easy to compare these savings with the cost of the administration of parole. But that does not by any means tell the whole story. How much is it worth to society to restore a man to a decent, self-respecting life? How much is it worth to save a man from becoming the tragic wreck he is likely to become if he serves out a long sentence in prison? Every day of the year the prison doors swing open and men walk forth after serving out their terms. Every day of the year the prison doors swing open and other men walk in, to begin serving terms. There is every reason to believe that the men who walk out are on the whole much worse, much less desirable characters to have about, than those who walk in. What an appalling commentary this is on contemporary civilization! This is not an argument for doing away with prisons and for not punishing people for crimes committed; it is a terrific challenge to the modern state to devise more intelligent ways of dealing with criminals. The parole system has greater promise than any other system yet devised for dealing with this problem. It is the business of the state to set up adequate machinery for its administration.

The functions of only one bureau in a department of public welfare have now been surveyed. There would need to be another bureau concerned with those afflicted with mental disorders. It is frequently said that these cases are increasing at a most alarming rate. Convincing data on this question are not available, because no one knows or can know the extent to which cases which are now recognized and dealt with were in the past unrecognized or ignored and thus were never counted. Be that as it may, government unquestionably is being called upon to care for a steadily increasing number of mental cases. Administrative agencies must be set up and enlarged in order to deal with them properly.

The state insane asylum is almost as old an institution as the state penitentiary. At one time the two were often under the same roof. In early days the problem was recognized only when the insane per-

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to make this body a subordinate and integral part of the general service and control agency, the head of this agency appointing the members of the parole board?

"Supervision of parolees appears to be an inseparable feature of the service side of correctional administration; and there seem to be strong objections to placing this function outside of the general service and control agency." Arthur C. Millsbaugh, *Public Welfare Organization* (Washington: The Brookings Institution, 1935), pp. 538, 539.

son was considered dangerous and when local authorities had no other means of caring for him. These cases were accepted by the state and kept under lock and key much as the criminals were. Insane but harmless patients were either cared for after a fashion in their own homes or were sent to the county poorhouse. Sometimes quarters were set apart for them in the county jail and there they lived on in misery and squalor. But in the last half century many factors have contributed to imposing upon the state an increasing responsibility for their care. Enormous progress in this field of medicine has been the most important factor. The utter inability of people to care properly for afflicted members of their own households has been another factor. The obvious inadequacy of local government has been another. At all events, one state after another has sooner or later established a separate hospital for the insane. Thus the various institutions that care for mentally deranged were gradually established.

Probably no state is today fully equipped to care for all the patients who should be cared for. Thousands of mental cases are in county poorhouses, chiefly because it is believed to be cheaper to care for them there than in state institutions. Other thousands are kept at home for one reason or another. Other thousands are cared for in a multitude of private institutions, many of which have a bad reputation. But even so, the state institutions are for the most part crowded to capacity and the end is not yet.

The process of committing patients to the state hospitals for the insane differs of course from the process of committing criminals to the penal institutions. Incidentally it leaves to the administrative authorities a larger measure of discretion as to admissions and discharges. People are usually committed by means of judicial process, the court ordering the patient sent to an institution after a proper hearing. Since it is very important that this process be surrounded with ample safeguards, the proceeding has always led through the courts. However, otherwise thoroughly competent judges are often wholly incompetent to judge wisely in mental cases. Thus a local commission including one or more physicians usually examines the case and makes recommendations to the court. Even so, the authorities of state institutions receive many patients who, in their opinion, should never have been committed. Some cases are so mild and harmless that it seems far wiser to put them under the guardianship of private individuals and thus to leave more room for the more serious cases.

Because of this tendency to burden the state institutions with cases of this sort, there has been a movement in some of the states to authorize counties to maintain small institutions for the harmless insane

and for those who cannot be cured. This tendency has been particularly accelerated in those states where the cost of maintaining the insane is charged to the counties. This is not an equitable practice, but it still prevails very widely. It is not equitable for the very obvious reason that counties do not have cases in direct proportion to their wealth, their size, or their population. The burden may be unusually heavy on a poor county and unusually light on a rich county of the same population. There is every reason to believe that the states will all assume this burden ultimately since that is only fair. But on the other hand, when the state assumes the entire burden there is every inducement for the local authorities to be rather careless in the matter of commitments. It is easy to discharge a burden in this way. Thus, at some point in the procedure, some state authority should have an opportunity to pass judgment upon commitments. Usually this is done *after* the patient has been sent to the institution instead of *before*, as would be the more sensible way. Institutional authorities may send a patient back, but if proper administrative machinery had been set up he would not originally have been committed. This argues for having a state representative participate in the local hearing.

There are today several different types of institutions to be found in most of the states. There are psychopathic hospitals, institutions for both adult and juvenile feeble-minded, hospitals for the epileptic, and the old-style all-embracing insane asylums. All these institutions should be grouped under the control of a central office, as was suggested in connection with penal and correctional institutions since there is as much need for co-operation amongst these institutions as in the case of the others. A bureau of mental hygiene under the direction of a chief responsible to the director of public welfare might have general charge of them all, though each institution would of course have its own resident superintendent. The bureau should have power to transfer patients as might seem best and there should be full co-operation among staff members of the respective institutions. The administrative setup often tends to obstruct co-operative use of staff members and equipment in situations where there ought to be the closest harmony.

Another bureau in the department of public welfare would be concerned with extending aid to the physically handicapped. There are thousands upon thousands of people, both children and adults, who are deaf or blind or permanently deformed or crippled and for whom much might be done. The local areas are quite unable to meet this situation. Only those people who are wealthy can afford to send members of their families to the private institutions which receive such cases. Thus here is a field where the state itself must assume responsi-

bility if anything significant is to be done. And there is much that can be done. Ways undreamed of a generation ago are being worked out to develop the potentialities of these handicapped persons. But the services of highly trained people, institutions, and equipment are necessary.

In the case of criminals, and in the case of the mentally deranged, an element of compulsion is present. People are sent by the courts to suitable institutions and there the government assumes the cost of caring for them. But in the case of the handicapped the situation is somewhat different. The state offers them certain facilities if they choose to take advantage of them. There is justification for making a charge for the services of institutions for the handicapped, but the charges should be as low as possible.

The bureau in charge of the institutions for the handicapped, under the direction of a bureau chief responsible to the director of public welfare, would constantly be exploring new techniques and experimenting with new methods of helping their wards. The possibilities in this field are enormous. Not only can much good be done by way of alleviating human misery and distress, but a great many afflicted people can be made wholly or partially self-supporting if given proper training. Furthermore, the possibilities of occupational therapy for the mentally deficient can be developed. Thus, not only from the humanitarian but also from the economic point of view, service to the handicapped through a bureau in the department of public welfare is eminently to be desired.

Closely related to this service, indeed overlapping it at points, would be the activities of those concerned with child welfare. Privately endowed research bureaus in the larger cities, and similar agencies connected with some of the colleges and universities, have done much exploratory work in this field. Much of it is of such character that states can scarcely be expected to subsidize it to any great extent. But there are certain aspects of it that are of great interest to the state. There are always many dependent orphans, waifs, foundlings, and illegitimate children whose parents either cannot or will not care for them. It has long been recognized that it is not desirable to have these children cared for by the local areas. Thousands of them are to be found in county poorhouses today, and other thousands are herded together into orphanages or juvenile homes maintained by the more populous cities or counties. Few of these local institutions have ever been maintained at a proper level of efficiency or decency, and few of them have developed the newer and more progressive ideas about child care and training. Here is something very important for

the state to do. Every state should maintain one or more institutions where dependent children could be cared for and to which children could be transferred from the county poorhouses and other local institutions that are not fitted to care for them properly.

In this connection there arises the familiar problem of charging the costs back to the counties. If that is done, the burden is not equitably distributed since counties obviously do not have dependent children in proportion to their taxable wealth. Furthermore, the practice involves a definite incentive for local authorities to keep dependent children in poorhouses or other unsuitable local institutions instead of sending them to the state institutions where they can be cared for much better.

The bureau of child welfare in the department of public welfare would have charge of these institutions. But institutional care at its very best is not desirable if it is at all possible to place children in satisfactory private homes. Placing dependent children in private homes is an old practice, but only in contemporary times have the problems connected with it been more than half appreciated, much less intelligently dealt with. For generations, not to say centuries, dependent children so cared for have been shamefully exploited and abused. Stupid, avaricious, and unscrupulous people have received dependent children consigned to them by government authorities, exploited them, half starved them, and otherwise abused them for the paltry sums to be gained by doing so. Yet despite this disgraceful record of abuses, there can be no doubt that placing children in private homes is not only feasible, but is also the most appropriate and suitable way to deal with a very large proportion of dependent children. The problem is clearly one of sound administration. The state can meet it and should do so.

The bureau of child welfare should maintain a staff of competent and experienced persons who would be concerned with placing children in suitable homes and keeping a watchful eye on them after they were placed. This is not such an easy task as most people suppose. Some children are subnormal and possessed of characteristics that make it most desirable to keep them in an institution. The bureau should see that they are not placed out. A great many well-meaning people, as well as people of the other sort, are not suitable custodians of children. The bureau should know how to identify such persons when they come seeking children for adoption or for care. Serious blunders can be made by placing children in homes which are perfectly respectable, but in which the best potentialities of the children can never be developed. A child of high potentialities placed with well-meaning but mentally dull foster parents becomes a tragic figure.

These situations can to a certain extent be avoided by members of a child welfare staff who are skillful in such matters.

Ideally, of course, there is much more to be accomplished along these lines than is either practicable or within the range of possibility. Nevertheless, a well-trained staff of people in a properly organized bureau could manage the process of child placement in a manner that would yield most impressive results, not only in terms of conservation of human beings but in terms of economics as well. But to do the work properly a fairly large staff is needed. Not only do the children need to be studied and tested and have their heritage investigated, but those who are available to take children into their homes need to be interviewed and carefully investigated if mistakes are to be avoided. All this takes time and energy of capable people and they cannot be hired for a pittance. Child placement has been too long looked upon as a simple routine task that any good-natured motherly sort of woman could perform. It has magnificent possibilities when handled intelligently.

This is a field in which much painstaking research may profitably be carried on. The psychologist, the psychiatrist, the sociologist, the dietitian, and various other specialists have each their contribution to make to the work of a child welfare bureau. And there is also much need of research in the other fields of social welfare. Especially is this so in the work being done in the institutions for the mentally deranged and in the field of penology. Therefore it is desirable that a research bureau have its place in a department of public welfare. In such a bureau students of these problems can have facilities for exploring and experimenting in order that new and better ways may be found for doing all these things that are so desirable from every point of view. A research bureau would, of course, be in constant close contact with scholars pursuing similar studies in the institutions of higher learning. Indeed it is quite possible to make arrangements whereby men and women connected with these institutions can devote substantial portions of their time to the work of the state bureau of research in the department of public welfare.

It is sometimes proposed that there be a bureau of industries and equipment in the department of public welfare. This is urged because there are sure to be many institutions under the supervision of this department that will have material needs of similar character, and also because it has been found quite practicable, indeed highly desirable, to carry on productive enterprises within certain of the institutions. All need to be provided with food, fuel, furniture, and a great variety of other supplies and equipment. Some of these needs

can be supplied in part by the institutions themselves, and equipment can also be manufactured for use by other departments of state administration. It has long been the practice to maintain printing establishments and furniture factories in state penitentiaries. Tailoring establishments can be maintained. Many institutions maintain large laundries and bakeshops. Sizeable farms can be operated by some institutions. Automobile license plates and highway signs can be manufactured.<sup>7</sup> All these undertakings are of a commercial character and need to be managed in a businesslike way. The problem is an old one and is beset with many difficulties. Not the least of these is presented by private business and organized labor. There is vigorous opposition to developing business enterprises in the state institutions to such an extent that the state itself comes into competition with private business. This happens when a state institution produces more of a given commodity than is needed by the state itself. Sale of the surplus in an open market arouses intense opposition.

A reasonable line to draw seems to be implied in the phrase "production for state use." So long as furniture, printing, highway signs, and other commodities are produced only for the purpose of supplying the needs of the state itself, there can be no valid objection. Such a limitation is irksome to those who see the possibility of profitably developing manufacturing operations along certain lines far beyond this. But the limitation is a wise one, nevertheless. Not only does it ward off most of the opposition from private interests, but it also checks the tendency to overdevelopment and the exploitation of those who are confined in the institutions.

Subject, then, to this limitation, a bureau of industries and equipment in the department of public welfare could assume charge of these business undertakings and develop new ways of providing suitable employment for those who are able to work. This bureau would of course carry on its activities in close co-operation with the principal bureau of purchase as described in Chapter VII. It would probably be wise to have some organic connection between the two bureaus,

<sup>7</sup> For a wholly different reason it is desirable to maintain these activities in the penal institutions. "Of course idleness in our penitentiaries should not be tolerated. There can be no doubt that general lack of employment is one of the greatest defects of our Illinois and of our other American institutions; that work properly done is the surest proof of reformation and of fitness for parole. No reformation can possibly be accomplished when men for months and perhaps years are compelled to remain in idleness. . . . Employment even is furnished when men are waiting for trial. We should, however, in no instance allow our prison wardens or those who are directly entrusted with the care and supervision and reformation of the convicts to make a personal profit from their labor. This was the defect of our earlier experiments." Illinois Committee on Indeterminate-Sentence Law and Parole, *op. cit.*, p. 27.



especially so far as concerns the distribution of supplies to the various institutions. If these activities were to be developed wisely, great savings would accrue to the state.

#### STATE SUPERVISION OF COUNTIES

One other major responsibility of a state department of public welfare needs to be considered here. This has to do with the work of local areas. It is inevitable that an enormous proportion of welfare work be done locally. The recipients of aid cannot always be moved to a central place but must receive aid in their own homes. The important decisions as to who should receive aid, and as to what sort of aid, must be made by some responsible person actually on the ground—not by some official in a distant central office. Someone must actually go to the homes of those who need relief, conduct extended interviews, make investigations, and arrive at decisions. And because many of the aspects of poor relief are so clearly of such character as to indicate local responsibility, it is not surprising that this function of government has resisted the centralizing tendencies that are to be observed so generally.

Nevertheless, the centralizing tendency has at last clearly embraced the function of giving relief to the needy in their own homes. This came about chiefly during the depression years, 1934 and 1935. Not only did local areas—counties, cities, and townships—find it impossible to finance the relief load, but even some of the states could not do so. Thus the federal government finally interposed and distributed hundreds of millions of federal money among the states for purposes of relief.

There can be little doubt that this step created something of an illusion in the minds of a great many people. It suddenly appeared that almost limitless wealth was available for this purpose, wealth which before did not exist at all. Of course this was not true. The actual social wealth of the people of the United States was no greater when the federal government took over a major portion of the burden of relief than it was when the counties and other local areas were carrying the entire burden. This is a point stressed again and again by those who oppose federal assumption of the burden. It was declared that in reality the United States itself possessed no wealth other than that possessed by the individual states and the local areas, that it was nothing but an illusion when the federal government seemed to have enormous wealth available at a time when the states and smaller units had none. Obviously the explanation was that some

states were indeed very poor, whereas others were wealthy. Furthermore, few states had tax laws and revenue measures of such character as to make it possible for them to draw as readily upon the wealth within their borders as could the federal government.

The long step that was then taken in the direction of centralization will probably never be retraced. No doubt there will be steps back from the high point reached during the depression years, but the impetus toward centralization having been very great at that time, it is the more likely to continue because there are several aspects of centralization that are highly desirable. These are to be observed on each level at which centralization takes place, for example, when the county assumes responsibilities formerly carried by townships or other local areas, when the state assumes responsibilities formerly carried by the counties or cities, and finally when the federal government takes over responsibilities formerly carried by the states.

The first thing to be observed is that when centralization takes place new sources of revenue become available. Even though there may be no additional actual wealth available, the larger areas possess taxing powers that are not enjoyed by the smaller areas. This situation could, of course, be corrected in part, but it seems to be easier to place responsibility where additional taxing power already resides than to expand taxing power on the levels where responsibility formerly rested. Thus the local areas are chiefly confined to the general property tax. In addition the state has the income, inheritance, sales, gasoline, and various other taxes. The federal government possesses channels for raising revenue that cannot well be exploited by the states. So then, here is a reason for centralization: it means the opening up of additional channels for raising funds. Even though it does not actually increase wealth, it tends to make wealth available for this purpose to a degree that it never was before.

A second thing to be observed is that whenever centralization takes place on any level it becomes possible to equalize burdens. Thus, out of a county general fund it is possible to distribute money among townships so that each of them will be in about the same circumstances. Out of the state treasury, filled by income, inheritance, and sales taxes, it is possible to distribute money among the counties so that they may all be in about the same circumstances. And out of the federal treasury, filled to overflowing by all the revenue-raising devices available to the federal government, it is possible to distribute money to the states in order at least partially to equalize their burdens. What this really means is that relatively rich townships help to carry the burdens of poor townships, relatively rich counties help to carry the

burdens of poor ones, and relatively rich states like New Jersey and Maryland help to carry the burdens of relatively poor ones like Arkansas and Oklahoma. Here lies another illusion of increased wealth. There is no increase in wealth. What centralization brings to pass is that in addition to opening new channels for tapping existing wealth, rich areas are compelled to help carry the burdens of poor areas.

A third thing to be observed is that power and authoritative control tend to concentrate at the point from which money is made available. In the process of centralization power lags behind though it steadily grows. Various devices are resorted to in order that the power shall not be too offensive. As was shown in connection with school finance, the grant from above may be made contingent upon the local area meeting certain standards. So it may be in the field of poor relief. State funds become available if the counties are willing to create approved machinery for the administration of relief; federal funds become available only to those states that conform to certain requirements established by federal authorities. Such power tends to grow. Requirements continue to be imposed until finally the higher authorities are virtually in control. They then take the final step of assuming full responsibility and the authority that goes with it.

That centralization has brought about enormous improvement in poor relief and welfare work cannot be doubted. That the process of centralization should now be brought to an end, or that there should be some measure of decentralization at least so far as the federal government is concerned, is a matter for debate. The purpose here will be, not to carry on this debate, but to consider what responsibilities the state is likely to be called upon to assume in connection with the various aspects of poor relief and welfare work, and how best the state agencies can be organized for the purpose. The tremendous drive toward centralization, even up to the federal level, has compelled every one of the states to assume relief activities. These they will continue to carry on even though the federal government withdraws entirely, which it is hardly likely to do. Many administrative agencies set up for relief purposes are still of an emergency character and are not supposed to be on a permanent basis. The discussion that follows here, however, definitely assumes a permanent state relief organization.

There could be in the department of public welfare a bureau to be known as the bureau of county contact, or bureau of local co-operation, or bureau of local relations. This bureau should in general be concerned with all the welfare services which the state helps to finance

and which it administers through local government. Here lies a problem of integration that has not been touched upon in these pages before. It has come to pass that county authorities undertake to administer widow's pensions, relief to the blind, old-age assistance measures, and other relief devices, in addition to the ordinary so-called outdoor relief or aid to indigents in their own homes.

When centralization occurs with respect to any of these activities, that is, when a state administrative agency is set up to exercise some measure of supervision over local administration of these services, it is likely that soon three or four, or perhaps more, wholly independent state agencies are exercising some authority over various local activities that ought to be closely related. The investigations that have to be made on the local level, the interviews that must be conducted, and the records that must be kept, are of the same character with respect to each of these services. All this work should be centered in one office, since it is very undesirable that the one central local office should be obliged to maintain contact with several wholly separate state agencies. Thus, in general, the bureau of local co-operation in the state department of public welfare should be the one channel through which the state should undertake to exercise control over the local administration of all public welfare services.

#### COUNTY WELFARE UNITS

It is not the purpose here to go into the problems of reorganizing local government. Those will be touched upon only incidentally in order to develop the problems of the state. In this connection it may be said that in every county there ought to be a central welfare agency controlled by a county welfare board which would employ a county director of public welfare. It is highly desirable that the state bureau should have at least a measure of negative control over the selection of these local directors. Some students of the problem insist that the state office should actually make the appointments, but this involves a degree of centralization that is likely to arouse the most vigorous resentment. It would seem that negative control should be sufficient. Thus the state bureau could fix certain minimum standards of qualification to be met by any person appointed as local director. Within these requirements the local authorities could make their own appointments. Not only would this tend to circumvent the opposition of those who dislike the tendency to centralization, but it would also have the positive advantage of emphasizing the sense of responsibility which the local director should feel toward the local board.

One of the interesting developments of the depression years was the practice on the part of emergency state offices of exercising in this matter a positive authority which they did not legally possess. Hastily enacted state laws, and regulations emanating from the federal offices, very properly required that counties appoint local directors who possessed certain semi-professional qualifications. Local authorities found themselves quite unprepared to find people who met these qualifications. Therefore the state office sent to the counties people who did possess them. The local authorities had no alternative but to appoint those who were sent to them. Hence it began to appear that the state offices were literally making the appointments, although neither state laws nor federal regulations authorized it. This was no doubt justified in the emergency but it is hardly desirable as a permanent practice. Not only has it tended to arouse local resentment but it has also tended to make the local appointee too vividly conscious of responsibility to the state office and somewhat indifferent toward, or even contemptuous of, local authorities. This condition, which has become very widespread, should be corrected. The local director should be keenly conscious of responsibility to local authority and be subject to the state office only in a negative sort of way, unless, indeed, the state is to take over the entire burden.

The local office, under the direct supervision of the locally appointed director, would be responsible for the administration of all local welfare activities. Chief of these would be relief of the needy in their own homes. This work has been carried on through local government for centuries. What needs to be done is to improve its actual administration.

The part that local private welfare agencies have played in this work should not be overlooked. Small, wholly private social-service leagues and welfare agencies long ago assumed leadership in this field and performed a service that was invaluable. Private agencies appeared because forward-looking, generous people believed that poor relief could be administered far better than government was doing it. Poor relief was frequently administered at the hands of self-seeking politicians. Grossly incompetent people were often in charge of it. No records were kept, no suitable investigations were made, no follow-up was undertaken. The result was unintelligent and unfair distribution of relief. Deserving people were neglected. Unworthy people brazenly imposed upon the unskilled administrators. Wastefulness and petty graft were everywhere. Indeed, this wretched handling of poor relief has given this function of government an evil reputation that will cling to it for many years to come.

But there were people who knew that it could be done much better. They organized these little private relief agencies and undertook to show how this service could be performed in a thoroughly intelligent and satisfactory manner. They co-operated with government. With their private funds they employed skilled workers and provided them with necessary equipment. These workers went out to investigate cases and to find out what sort of relief was best adapted to the individual case. Records were made and put on file. Appropriate relief was given and a careful check was made to see that the food or commodities delivered were just what had been ordered. Thoroughly businesslike, systematic methods were developed. Blundering wastefulness began to disappear.

All this required money and the time of competent people to study the needs of relief cases and to make the necessary investigations. Office equipment and office help had to be secured to keep the records in good shape. Government was very slow to provide these things. The private agencies did it. In a word, government was stumbling on in the old hit-or-miss, wasteful, stupid fashion that had characterized poor relief for generations. The private agencies introduced new methods, efficiency, ideals of intelligent relief truly adapted to the needs of individuals. And, incidentally, due to the abandonment of the wasteful methods, great savings were effected. No longer were relief funds being poured into a sieve.

Here and there government responded and followed in the path of private agencies. It employed skilled workers or appointed social service secretaries to be overseers of the poor. The practice of record-keeping and the other devices that make for efficiency were gradually introduced. But it was not until the great depression struck, and government was compelled to pour millions of dollars through the channels of relief, that the private agencies showed their true worth. Government literally absorbed them, leaned upon them, took them over bodily, and called upon them to administer this huge volume of relief.

In a word, the private agencies were a perfect godsend to government when the problem attained great proportions. State and federal authorities now require local areas to meet the standards established by the private agencies many years ago. There could be no greater tribute to the usefulness and worth of the private agency. Public-spirited people should and will keep these private agencies alive so they can go forward and continue to do things that government either cannot or will not do. Already these agencies are learning how to deal with families on relief in such a way as to remedy the conditions

that make for chronic dependence. They are trying to get at the basic causes that make for broken homes, family discord, antisocial attitudes, and tragic maladjustments. The able physician tries to afford immediate relief for his patients in distress and he also sets out painstakingly to find and eliminate the causes of existing conditions. The future of the private agency lies in getting at causes, and in so doing there is literally no end to the work that can be done. Government should do as much of it as the public is willing to have financed out of public funds.

People frequently say they are willing to give money for the relief of the poor but that they are opposed to having their money spent to maintain expensive offices or to pay high salaries to specially trained people to do such a simple thing as to dispense relief. They believe the overhead is altogether too high. When they give money for the relief of the poor they want to be sure that it reaches those who are in need. This is a sentiment which is often expressed with great vigor and with many intimations to the effect that a large proportion of the funds contributed for relief are wasted in overhead.

Usually the person who makes such a protest as this is not aware of the difficulties involved in the giving of relief. He thinks: If a worthy person is in need, give him some food, fuel, or clothing. What could be simpler? Why have an expensive office and salaried experts to consume the funds that should go directly to relief?

But the task is not so simple as it seems. In the first place, it is a baffling problem to determine who are really in need and who are trying to impose upon the relief worker. The unskilled worker arrives at conclusions too readily, does not ask the right questions, is prone to prejudice, and is likely to be either too gullible and thus too easily imposed upon, or too suspicious and thus unfair to worthy applicants. It takes a long period of experience and also the cultivation of poise and self-possession before one can be confident when meeting these situations. In the old days unpracticed overseers of the poor were constantly guilty of giving relief to the undeserving, and of withholding it from those who were worthy. They seldom realized their own blunders.

In most cases, visits are necessary if a wise decision is to be made. These visits used to be resented by applicants for relief, but it has at last become apparent to almost everybody that, if public funds are not to be stupidly squandered, someone must personally investigate the circumstances of those who ask for help. Doing this takes time; it also requires skill, tact, powers of observation, and good judgment. All sorts of circumstances and conditions in the home have a

bearing upon relief problems. The skilled worker notes these things and is thus in much better position to give intelligent relief. The inexperienced, unobservant, untactful worker misses a thousand opportunities to give helpful advice and to render the sort of aid that is best suited to the particular case in hand. This is important because the social worker should be very much concerned with helping those who are on relief to re-establish themselves so as not to become habitual applicants for aid. To do this wisely requires skill, tact, patience, and other qualities of character. People who possess these qualities are worth money.

Adequate records of every case must be prepared and kept on file. It is very important that the relief office have at hand complete information about everyone who has received aid. Only then can new requests for help be intelligently dealt with. In the absence of such records the relief worker must trust to memory, he is easily confused and imposed upon, and in consequence makes bad mistakes. A thorough record of what each applicant has received, and when it was received, should accompany other information about the case, together with the observations and comments of whoever made the visits. To keep these records in good, usable condition takes time, equipment, and skill.

A well-managed local welfare office must be in touch with all the tradesmen who dispense the things needed by applicants for relief. Prices must be agreed upon, standards must be fixed, the business must be equitably distributed. Above all else the relief worker must be constantly vigilant to see that standards are maintained, that relief applicants are not imposed upon by unscrupulous dealers, and that connivance is not practiced by tradesmen and applicants for the purpose of getting commodities other than those authorized by the relief office. There are many ways in which a sound program of relief can be wrecked with resulting gross extravagance if the relief worker is not alert to the difficulties of this aspect of the problem. To meet the problem effectively requires a person of training and experience.

All this goes to show that money spent for overhead may be very wisely spent. To head up a relief office, a person who is possessed of the training, experience, abilities, and qualities of character that are desirable can only be secured at a substantial salary. To put the work in charge of one who does not measure up to these requirements is to court blunders and inefficiencies that can never be measured in dollars and cents, any more than one can measure the real loss to himself if an incompetent dentist has attended to his teeth or an incompetent builder has constructed his house. To try to get along with-



out proper office equipment and competent people to use it is to bring about the same sort of losses that would occur in a business establishment that lacked adding machines and typewriters.

The state bureau could be very helpful to the local welfare department in all these activities. The extent to which it should exercise authoritative control is a matter which must be determined by experience. There is reason to believe that local government will be substantially reorganized and greatly improved in the years to come. Indeed, progress in local government and in state government is quite likely to be simultaneous. If this proves to be the case, the arguments for state centralization will be robbed of much of their force. Certainly there ought to be very close co-operation between the state and local agencies operating in a given field, but this does not necessarily imply authoritative control on the part of the state. A state bureau could be of very great aid to local welfare agencies without this.

Other aspects of local welfare work are becoming ever more important. Many states authorize the payment of allowances to the blind, to indigent aged, to war veterans, and to indigent widows with children under a certain age. The local welfare agency ought to be fully equipped in every way to administer these measures.<sup>8</sup> The chief problem, almost the whole problem, is one of visitation and investigation in order to ascertain the facts concerning applicants. Once ascertained, records must be filed and appropriate subsequent investigations made as years go on, in order to determine whether or not the recipient continues to be entitled to the allowance authorized. This is precisely the sort of work that trained case-workers in a well-organized welfare office are prepared to do. It is a great mistake to set up and maintain separate, unconnected boards of unskilled laymen to investigate and pass upon these cases. The local director of relief, with his staff of trained workers, could absorb these services to very great advantage from every point of view.

<sup>8</sup> "Another series of experiments in county organization has been carried out in Iowa, beginning at Grinnell in 1912. The Iowa Plan in its most representative form contemplates the formation of a central social service bureau or league composed of representative citizens, with the members of the county board of supervisors acting as members ex officio. In this board are centered the private social agencies of the county. It also administers the county outdoor relief. This is secured by having the secretary of the social service league appointed overseer of the poor. Such appointment is of course purely voluntary on the part of the county board of supervisors. It has been adopted in a number of counties, though in some of these the services rendered have been centered in certain communities or townships rather than covering the county as a whole." H. W. Odum and D. W. Willard, *Systems of Public Welfare* (Chapel Hill: The University of North Carolina Press, 1925), pp. 216, 217.

Admission to all of the state eleemosynary institutions—hospitals, orphanages, asylums and sanitariums—would be through the local welfare office. Too often the granting of this admission is made a judicial function; courts are called upon to decide whether or not an applicant for admission to an institution, or an applicant for an allowance of some sort, is entitled to what he wants. Hearings are conducted before the court and the court enters an order granting the request.

This is a proper function of an administrative agency, not of a court. The court does not have proper facilities for making necessary investigations. Often it devolves upon the county attorney or some other elected county officer to investigate the merits of a case. Such an officer is likely to have neither the experience, aptitude, nor willingness that he ought to have in order to do the task well. His investigations are very cursory and inadequate, and he has every inducement to recommend to the court that the application be granted. Since there is virtually nobody to take an opposing view, the court usually grants what is asked.

The action of a court is appropriate only where the commitment is involuntary. When a person is declared to be insane, and is deprived of his liberty and held in an institution, it is proper that his commitment require authorization by the court. But when a patient applies for admission to a state tuberculosis hospital, for instance, there is no occasion for a court to function. There is something, however, for the local welfare office to do. It should investigate the case thoroughly to determine whether or not the applicant is entitled to admission, and on what terms, that is, as a state case or as a paying patient. This is administrative work for which administrative officers ought to have full responsibility. All work of this sort should be centered in the local welfare office.

The supervision and custody of juvenile delinquents, the supervision of those put on probation by the criminal courts, and the management of local jails, orphanages, and other institutions, are very important responsibilities which are destined to accumulate in local welfare agencies. The tendency has been to keep them separated. The county jail has always been under the jurisdiction of the sheriff, and only in contemporary times has it been recognized as an institution that is involved in a broad program of social welfare. With the development of the idea of probation, and in view of modern transportation facilities, the county jail may tend to disappear. The state itself might properly maintain a few institutions strategically located to take the place of the numerous jails.

Probation has great possibilities, particularly as respects children.

Indeed, it may be said that the only weak spot in this method of dealing with offenders is that of administration. If plenty of thoroughly competent people were available to administer probation, it would be a splendid thing. Probation is similar to parole. Parole occurs after the offender has been convicted and sentenced and has served part of his term. Probation is a substitute for imprisonment. The court turns the offender over to the probation officer in the hope that his conduct will ultimately justify setting him entirely at liberty, without his having been in prison at all. It is applicable to the minor offenses.<sup>9</sup> Parole should be administered through a state agency. Probation, particularly the probation of juvenile offenders, may well be administered through a local welfare agency.

The federal social security program is destined to impose new responsibilities upon state and local agencies of welfare administration. Within the near future it is altogether likely that every state will have in operation some scheme of pensions, insurance, or assistance for the aged, and also a program of unemployment insurance. Administrative agencies will have to be set up or enlarged in order to assume these tasks. In one sense, the functions implied in both the old-age-assistance programs and in the unemployment-insurance programs will of necessity be local in character. Local offices will have to be set up to administer them. It is desirable that when this happens the machinery will be set up within the scope of a properly organized local welfare department, and under the limited control and supervision of a bureau of local co-operation in the state department of public welfare.

<sup>9</sup> "Probation and parole should not be confused. They are alike in that the offender is permitted to live as a member of the community under some form of supervision. They are unlike in that after guilt has been established, probation is a substitute for commitment to an institution, whereas parole follows commitment and a period of incarceration. Pending trial and before guilt is established, the person subsequently placed on probation may be kept in confinement for a period of time. But there is a distinction between such safe keeping and a definite term of commitment to a correctional institution. Until tried and convicted the defendant is presumed to be innocent." Fred R. Johnson, *Probation for Juveniles and Adults* (New York: D. Appleton-Century Company, Inc., 1928), p. 5.

## CHAPTER XII

### PUBLIC HEALTH

It is clear that problems of public health are very closely related to problems of public welfare. Indeed, so closely related at certain points are these two fields of public administration that it is sometimes urged that all the activities connected with both of them be carried on through one department of administration. But doing that would be a mistake. It is quite true that public health is closely related to welfare, and it may even be said that the term welfare includes health in a very real sense. But it is desirable to make some rather arbitrary distinctions here for the practical purpose of organizing administrative agencies to the best advantage. In a broad sense, everything the state does is in the interest of public welfare. The state has no other reason for existing. If the phrase is to have any particular significance in administration, some arbitrary limits must be set to its implications. These limits were suggested in the preceding chapter. The activities described there are the ones usually looked upon as falling within the field of public welfare. There can be no exact line of demarcation.

One distinction may be ventured: activities in the realm of public welfare ordinarily involve dealing with people, rendering service and aid to the unfortunate; activities in the realm of public health, on the contrary, involve dealing with conditions, correcting bad situations, and fixing standards which people must observe. The administrator in the field of public health is little concerned with human traits, qualities of character, personality, and the adjustment of people to the social conditions in which they must live. The welfare administrator can never let these matters slip from his mind, however, since they are his primary concern. The public health administrator on the other hand is more of an engineer than psychologist. He is more or less impersonal in his approach to those physical conditions that are his chief concern. The welfare worker must always emphasize the personal approach in attempting to adjust the individual to society.

This difference alone might justify the maintenance of separate agencies of administration for these two fields, but there is a still more important consideration that has a bearing on the matter. It is that in one of these areas of administration emphasis must be placed on con-

trol; in the other area, emphasis must be on service. In Chapter I the point was made that so far as possible service and control functions should be separated in setting up the administrative structure. It is quite impossible to do this literally, down to the last detail, but it is possible and quite practicable to separate the functions to a very considerable extent.

A department of administration which emphasizes service desires to stimulate a public reaction that is wholly different from the sort that usually greets efforts at control. A welfare department is the pre-eminent service department and outranks all others in this respect. A health department is primarily a control agency, second only in this respect to a department of justice. A health department must issue orders, compel people to stop doing things they want to do and make them do things they do not want to do. It must sometimes even destroy property against the protests of the owner, do things that interfere with personal liberty, and fix standards that people do not want to meet. Doing these things is control, not service, and the less of it to be found in a service department the better, since control activities tend to destroy the cordial public relationship essential to high-class service. It is not to be implied that an agency concerned with public health should come, in the guise of a domineering policeman, to order people about in an arrogant fashion. The health officer is indeed concerned with service of a very fine sort, but it is inevitable that the problems he must face and solve call primarily for control at many points.

Thus there is ample reason for having a separate and distinct department of public health. Certain activities very clearly belong in it. The student of administration does not go very far, however, before he discovers that many of the things which a department of health might be expected to do are things with which other departments might also very properly be concerned.<sup>1</sup> Indeed, there is perhaps no other department in the administrative structure that presents so many baffling problems of integration. The health of school children is certainly of concern to a department of health, but so it is of the department of education also. The proper ventilation of a factory, or of a coal mine, is of concern to a department of health, but it is also the concern of a department of labor. The suppression of an unsanitary dairy, or the destruction of diseased livestock, are problems for

<sup>1</sup> In discussing ramifications of the Federal Public Health Service, Dr. Herring says: "To list its cooperative activities would be to call the roll of the departments and some of the independent establishments." Herring, *Public Administration and the Public Interest*, p. 337.

the health department, but they are also problems for the department of agriculture.<sup>2</sup> The pollution of a stream is of concern to the health department, but it is also of concern to the department of agriculture whose interest is in protecting farm animals. Stream pollution is also a concern of the conservation department in the interest of conserving fish and game. Similar examples of overlap into the department of public welfare are so obvious and numerous as to make it unnecessary to mention them at this point.

These outstanding illustrations should make it clear that a department of public health must inevitably penetrate into areas that are primarily the concern of other departments. This argues for the clearest possible delimitation of its powers and responsibilities, in order that there shall be a minimum of discord in administration. Another reason why the powers and duties of a department of health need to be very clearly and carefully defined is that it must exercise quasi-legislative, quasi-judicial, and police powers to a very important degree. The point has been made many times in this volume that if administrative departments are to fulfill their greatest possibilities they must be given freedom to determine policies to a great extent, and to exercise what has been called quasi-legislative power within a given field. This is particularly true of a department of health, since serious trouble lies in the fact that determination of policies by a health department is likely to affect personal and property rights to an extent not the case in other areas. This is always more or less true in the exercise of a control function. The determination of certain policies by a department of health may actually put some people out of business. Others may see their property destroyed as a result of specific rulings, or be put to great expense. Such effects as these do not ordinarily flow from the exercise of quasi-legislative power by a department of education or public works, for instance.

Quasi-judicial power becomes very important when exercised by a department of health. The person who believes himself injured finds his claims denied by an agency which seems to possess all the powers

<sup>2</sup> "Laws relating to the control of milk supplies place the responsibility for their enforcement with the department of health in 18 States, the department of agriculture cooperating with 7 of them; with the department of agriculture in 17 States, the department of health cooperating with 4 of them; with the department of health and agriculture in 2 States; with the State dairy and food commission in 7 States; with the department of agriculture and the State food and drug commission in 1 State; with the State livestock sanitary board in 1 State; and with the State university in 1 State. Only 1 State has no laws relating to milk supplies." U. S. Public Health Service, *Public Health Bulletin No. 184* (1932), p. 141.

of a court, so far as he is concerned.<sup>3</sup> As a result of its decision he is ordered to close his theater, buy new equipment, or abandon some activity. And in the exercise of executive or administrative power the agent of the department of health is often in a much more delicate position than the representatives of other departments. It is one thing for the representative of a welfare department to deliver some groceries to a needy family, or for a representative of the department of education to open a playground or organize a high-school orchestra, but it is quite another thing for the agent of the department of health to enter a butcher shop and condemn and destroy meat he regards as unfit for use.

Departments of health must nevertheless be possessed of much greater discretion than they have used in the past if they are to do the many things that ought to be done in the interests of public health. Our system of law has tended to paralyze administration. In the first place, the courts have tended to construe powers very narrowly. The administrative agency is obliged to prove beyond a doubt that the law definitely authorizes the action which it is proposed to take. The presumption is always against the right to take action. Doubts are very frequently resolved against the administrative agency and in favor of the complainant. This makes for paralysis in administration. Furthermore, the actual person—not the department or the agency, but the actual person who is about to perform some act—must proceed upon his own responsibility. If he personally does something which the law does not authorize him to do, he is liable for damages in case he injures someone in person or property. This legal interpretation of executive power also has a paralyzing effect which is especially apparent in the activities of a department of health, since a suit for damages is far more likely to follow in the wake of the exercise of unauthorized power by this department than it is in the case of wrong exercise of power by most other departments. The worst that can happen in cases of this sort involving most departments is the issuance of a court order to stop. In the sort of cases under consideration it may well be: stop—and pay damages.<sup>4</sup>

<sup>3</sup> "The health commissioner who in the exercise of his authority orders the destruction of a man's property is in effect adjudicating that man's property rights in as full a sense as a court when it orders the abatement of a nuisance." John Dickinson, *Administrative Justice and the Supremacy of the Law in the United States* (Cambridge: The Harvard University Press, 1927), p. 16.

<sup>4</sup> "Where the administrative action is summary, and based on no formal finding of facts, the old method of indirect review by an action for damages remains the only available channel of relief. This is the case, for example, where a health board has summarily destroyed property on the grounds of immediate danger of disease. Here

For these reasons departments of health are relatively slow to develop their full potentialities. They need to enjoy a larger measure of discretion in the making of rules and the determination of policies than they have yet enjoyed. The courts must be somewhat more liberal in interpreting grants of power. The individual officer who acts in behalf of his department must be able to shift a larger measure of responsibility to the department instead of bearing it himself if departments of health are to make the notable progress that has been apparent in other areas of administration.

All this argues very strongly for giving the most serious and careful consideration to the proper organization of a health department. It would be a great mistake to grant power and the right to exercise broad discretion, to an ill-organized, badly integrated, and poorly staffed department.

#### BOARD OF HEALTH

A department of health should be under the control of a board. The need for geographical representation on the board is not apparent and there are no clearly defined elements of society that need to be represented. Moreover, this is one board usually not dominated by laymen. A majority of the members often possess professional qualifications that can be established by law.<sup>5</sup> Most of the members are often physicians of several years' experience. It may be important that at least one member be an experienced sanitary engineer. Other members of the board may be laymen, but in making appointments a governor should keep in mind that a man of legal training could here serve a very useful purpose. It is not feasible to attempt to afford representation on the board of health to such professions as dentistry, psychiatry, and osteopathy. Their interests should be fully

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the court can obviously not be bound by administrative findings, since in a formal sense there are none. But it does not necessarily follow that the officials' opinion of the facts, as disclosed by their action, should be completely open to be re-examined and disregarded by a jury." John Dickinson, "Judicial Control of Official Discretion," *American Political Science Review*, XXII (1928), 299.

<sup>5</sup> "The most essential qualifications for membership on the State Board of Health is that the member shall be a representative, public-spirited citizen, who is interested in, and familiar with public health affairs. Many states have designated specific qualifications for membership on the State Board of Health; for example, the requirement that a certain number of the Board must be physicians, or sanitarians, or engineers, pharmacists, educators, veterinarians, etc. Eleven states require that all members of the Board must be physicians. These specific designations for membership which are written into the law are of questionable value. It is much more important that the members are representative and intelligent persons who have a real interest in, and knowledge of, public affairs." Wilson G. Smillie, *Public Health Administration in the United States* (New York: 1935) pp. 338, 339. (By permission of The Macmillan Company, publishers.)



protected through the various examining and licensing agencies within the department. A board of seven is probably large enough. The members should be appointed by the governor for relatively long, overlapping terms.<sup>6</sup>

The matter of compensating members of a board of health is perhaps of more importance than it is in the case of most other boards. As already indicated, the functions of this board are peculiarly delicate and vital. Every inducement should be offered to guarantee careful and conscientious attention to the work of the department. Time demands upon members of a board of health are likely to be greater than in the case of other boards. Actual expense allowance should be enough for members of most boards, but for those of a board of health there should be a substantial *per diem* allowance for days devoted to sessions of the board. The *per diem* allowance is of course open to grave abuse and should not be generally granted. It tends to induce boards to meet oftener than is necessary and to prolong sessions. In addition to this it is likely to stimulate interest in board membership on the part of people unfitted for the positions. In the case of the board of health, however, professional requirements for membership might act as an adequate safeguard against these abuses. The *per diem* allowance would in part compensate for the time sacrifice which professional men might not otherwise be willing to make.

The board of health should appoint a full-time executive officer of high professional qualifications.<sup>7</sup> In many states the principal health officer is appointed by the governor, even though there is a board of health.<sup>8</sup> This is not a good arrangement. It definitely tends to deflate the board and to undermine its interest in the work of the department.

<sup>6</sup> "In 42 of the States the terms of office of members of the State board of health expire in alternate or at least in different years so that at least a part, usually a majority of the board, will be persons who are experienced in handling its affairs. In two States, Arizona and Pennsylvania, all the members go out of office at the same time. In Iowa the terms of all the members may expire at the same time, as the members go out of office according to the time of appointment." U. S. Public Health Service, *Public Health Bulletin No. 184* (1932), pp. 23, 24.

<sup>7</sup> "In about one half of the states the health officer is selected directly by the Governor. In most of the remaining states he is selected by the State Board of Health, . . . The latter is the better policy. In many states, the term of the Governor is for two years only. Bitter experience has frequently shown that an excellent, well formulated health program has been wrecked repeatedly by political upheavals. These have resulted in the frequent changes in state health executives, each time a new governor has been elected. The consequence is a lack of continuity in development of the health program, with no security of tenure of office, a disturbed morale of the personnel, and inefficient service." Smillie, *Public Health Administration in the United States*, p. 340.

<sup>8</sup> "There are two common methods of selecting the State health executive, namely, by the governor or by the State board of health. In 22 States the choice of the health officer is in the hands of the State board of health. He is appointed by the governor in 24 States, 6 of which require the approval of the State senate and 3 the consent of

It also impairs the sense of responsibility of both the board and the officer himself. The health officer should be conscious of a sense of duty to a group of people, some of whom, at least, possess professional qualifications equal to his own, for only when that is the case can he hold them in that measure of respect which should accompany a sense of trust. On the other hand, the board should have authoritative control over the officer who is to administer the policies it resolves upon. A mutual sense of responsibility, respect, and confidence is very important.<sup>9</sup>

It would be necessary to divide the department into several bureaus, since there are separate and well-defined fields of activity with which the department concerns itself.

### BUREAUS IN THE DEPARTMENT

One important bureau would be concerned with the control and suppression of communicable disease. This is probably the oldest activity of state departments of health. Most states very early had some laws that dealt with such diseases as cholera and smallpox. Some of these laws were rather naïve, and most of them were inadequate. They imposed penalties upon people who were afflicted, if they travelled about, and they prescribed the sort of warning flags and other signals such persons had to carry when they ventured beyond their own premises. Other laws required afflicted persons to be isolated in remote pesthouses under conditions that were little less than barbaric. A board of health in modern times would adopt enlightened regulations concerning quarantine and the disinfection of habitations occu-

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the executive council. The 2 exceptions are Alabama (where the State health officer is elected by the State committee of public health and confirmed by the State medical association) and South Carolina (where the State health officer is chosen by the executive committee of the State board of health).

"The executive officer is elected from outside the membership of the State board of health or council in 25 States; either from or outside in 12 States; and from the State board of health or council in 7 States." U. S. Public Health Service, *Public Health Bulletin No. 184* (1932), p. 34.

<sup>9</sup> "In all that has been said the expertness of expert administrators has been taken for granted. As matters stand, it may be doubtful whether the assumption is fully in accord with the facts. A recent enumeration mentions a commissioner of health in an American city who was a harness-maker; a public utilities commissioner who was a barber; a commissioner of sanitation who was a house-mover; and another commissioner of health who was an undertaker. The correction of this state of affairs rests, not with the courts, but with the appointing or electing power. The law, however, inevitably adapts itself to the conditions which it finds, and before we insist that expert administration be relieved from hampering interference by the judges, we should make sure that its expertness is above suspicion." Dickinson, "Judicial Control of Official Discretion," *op. cit.*, p. 300.

pied by victims of these afflictions. They would impose upon physicians very strict obligations to report promptly all cases coming to their attention. Cholera and smallpox have almost disappeared, but diphtheria, infantile paralysis, typhoid fever, and other diseases still present formidable problems to public health authorities.

Medical men know how to deal with these communicable diseases. The problem for public health authorities is to devise some practicable rules and regulations and to see that they are enforced. The attending physician must be required to make reports in accordance with rules laid down by the state board of health. Failure on his part to make reports should be followed by the application of penalties, either a fine or suspension of the offender's license to practice. Quarantine regulations adopted by the state board must be made applicable to patients and members of their households, and they must be supported by appropriate penalties. The state department should also be fully prepared to provide attending physicians with medicines and other supplies necessary to the proper treatment of these ailments. In addition, this bureau of communicable disease in the state department of health would constantly be providing physicians and laymen alike with the latest information concerning the control of communicable disease in order that the use of vaccines and approved safeguards might become widespread.

Within the bureau of communicable disease there probably ought to be a division of biologics capable of rendering service to the physicians of the state and to local public health authorities. This division would have on hand an adequate supply of such things as diphtheria antitoxin, tetanus antitoxin, smallpox and typhoid fever vaccines, rabies virus for the inoculation of patients who required it, silver nitrate for the treatment of the eyes of infants at the time of birth, and neoarsphenamine for the treatment of syphilis.

No enumeration of the materials which a division of biologics should have on hand could ever be complete. New things may be discovered tomorrow that would be invaluable. The point is that a department of health should have within it a small administrative unit prepared to extend this sort of service. It should be a particularly efficient unit. It is perfectly obvious that speed and accuracy would be very important in rendering this service.

The division also should maintain a bacteriological laboratory where cultures could be prepared and analyses made. This service would be very important in suspected cases of rabies or tetanus. This laboratory would also be available to those who were investigating crimes, especially suspected poisoning. Laboratories where this sort of

service can be rendered are always to be found in connection with good medical schools, and therefore in those states which maintain medical schools at the state university or elsewhere, the bacteriological laboratories of the state department of health could properly be merged with the laboratories of the medical school.

The control of venereal diseases is recognized as such an important problem as to justify the setting up of a distinct administrative unit for the purpose. A division properly organized would be concerned with disseminating information concerning these diseases, giving instructions to the victims, and trying in every way to reach them. It would maintain clinics for treatment in so far as funds would make this possible. The problem of dealing with venereal disease is partly one of overcoming inhibitions that are centuries old. The victim of rabies rushes to public authorities in a frenzy of eagerness to get from them all the aid they can give. The victim of gonorrhea or syphilis slinks away and hides, and often resents efforts to give him aid. Nevertheless, public health departments are doing a very great deal to overcome these difficulties. Every state, through its administrative machinery, should be prepared to do at least something, particularly since it is altogether probable that the federal government will continue to co-operate with the states in this field, provided the states are prepared to co-operate effectively with the federal government.

A second very important bureau in the department of public health would be interested in the compilation of medical statistics. These include the ordinary vital statistics concerning births, deaths, marriage, and divorce. Progress in medicine, and particularly progress in public health work, can be very greatly facilitated by the compilation of reliable data concerning disease. Statistical data relative to cancer, tuberculosis, infantile paralysis, and numerous other diseases are of inestimable value. Data giving causes of death shed great light on the problems of public health authorities. It would be futile to attempt to outline in detail precisely what statistical data a bureau in the department of public health ought to compile, because next week it might become apparent that some new sort of data would be useful, and certain types of data might cease to be significant. The bureau should be prepared to attempt to collect the sort of thing that medical authorities believe they need, and which it is practicable to try to get.

For a great many years births, deaths, and marriages have been recorded in one or another of the county offices. This practice should no doubt continue, but it is likely to be better done when local government undergoes some much-needed reform. Whoever the local recording officer may be, he should be responsible to the bureau of

medical statistics and keep his records on forms prescribed by that bureau. Doctors, midwives, undertakers, ministers, and other people who would possess the information needed should be under legal obligation to report the factual data required. To a considerable extent this is already being done in all the states, or at least the need for it is clearly recognized, and public officials compile the data. The problem has been to compel doctors, midwives, and others to report, and to compel careless local officers to keep the records in proper shape. For many years there was much popular resistance to the reporting of facts that seem to be of such a private and personal character, and many physicians were disposed to abet their patients in keeping such information private.<sup>10</sup> But, except in very backward areas, this unsocial attitude is rapidly disappearing and the medical profession itself is assuming leadership in dispelling it. In a great many states, popularly elected, and therefore—in an administrative sense—irresponsible, and often incompetent, officials are still the ones who compile the data. Improvement in the machinery of local government, the introduction of the merit system, and aggressive supervision on the part of state officials will remedy present defects to a large extent. This is all the more to be desired because as years go on the medical profession and public health authorities will see the need for more and more data. Adequate administrative machinery for compiling it should be at hand in every state.

In Chapter III the possible activities of a bureau of records in the chief executive's department were considered. The proper relationship between such a bureau and the bureau here under consideration raises a problem of integration. Medical statistics are of course primarily useful to the department of health. Clearly they should be available in that department. However, certain of the data ought also to be available in the central bureau of records. The central bureau should determine what part of these data ought to be in the central office, and get it from the bureau in the department of public health. There ought to be many ways in which the two bureaus could co-operate to their mutual advantage, avoid unnecessary duplication of effort, and yet have material available where it is needed.

Public health engineering is a phrase that is probably new and perhaps meaningless to a large proportion of the public. Some of the

<sup>10</sup> "Beginning about 1900, communities began to interest themselves in a purposeful way to provide facilities for the promotion of health of the individual. The initial activities were undertaken almost entirely by voluntary, and not by official, health agencies. In many communities at the present time the organized medical profession has not, and does not yet, sanction the assumption of this function by public health officials." Smillie, *Public Health Administration in the United States*, p. 7.

activities embraced in this field are sufficiently familiar, and even the dullest citizen can readily appreciate the importance of the work included under that heading. After the citizen learns about public health engineering, he is likely to believe in it. The suppression of obviously offensive nuisances that menace public health has long been the responsibility of particular local officials. The trouble has been that certain serious menaces to health are not at all obvious to the layman or to elected local officials such as township trustees. Only the expert in this field can be relied upon to carry the work forward to the fulfillment of its best possibilities. This should be the responsibility of a bureau of public health engineering in a state department of health.<sup>11</sup>

Very specific suggestions and regulations, having the force of law and intended for the guidance of local authorities, should issue from this bureau. The bureau itself should be prepared to conduct inspections, surveys, and other actual engineering operations that are beyond the capacities of local government.

Much has been done to improve the public water supply. Engineers know what to do in order to make the public water supply safe. The whole power of the state should be behind them in their work of bringing it to pass that in every city, village, and hamlet the public supply of drinking water—at least—shall not carry with it the menace of disease. This is an extensive undertaking, but certainly every state should have the administrative agencies ready to assume the responsibility to whatever extent the legislature is willing to finance it. Inspection of private water supplies, springs, and wells could be carried on to a limited extent as a service to private owners who request it. This is an aspect of public health engineering.

The proper disposal of sewage and other wastes is another aspect of public health engineering. It is of concern to the entire population that small towns and villages, as well as great cities, should do this properly. It is not a legitimate prerogative of local self-government that even a small village should dispose of its waste in such manner as to menace public health. The state should assert its power to abate such conditions. Again engineers come to the front and point

<sup>11</sup> "The shift of population from rural to urban conditions, and the movement from city to country for recreation has steadily increased the problems of environmental sanitation.

"The safeguarding of water and milk supplies and the protection of streams, lakes, and harbors against pollution have given the engineer an important role in the field of public health. Moreover, his services are required in measures directed to soil drainage, mosquito control, disposal of industrial and other wastes, the sanitation of homes and bathing places, the abatement of nuisances, and many other activities concerned with the protection of public health." U. S. Public Health Service, *Public Health Bulletin No. 184* (1932), p. 105.

the way. The state should maintain an administrative agency through which they can work effectively. Highly efficient sewage and garbage disposal plants have been perfected and society should profit by their installation where they are clearly needed. Less ambitious and expensive ways of disposing of wastes can be followed in the smaller communities, and the state bureau of public health engineering should assume authority and leadership in seeing to it that they are followed.

Suspected swamps, rivers and other streams, lakes and ponds should be inspected and surveyed and proper steps should be taken to correct conditions that menace health. The possibilities in this field are enormous. In this connection the department of health would find itself in contact with the agencies of state administration that were primarily concerned with conservation and the preservation of fish and game. Overlap and conflict in the exercise of power and authority should be avoided. The bureau of public health engineering would need to have its responsibilities very clearly defined, and it should of course devote itself to problems of public health. But a fish and game commission, for example, should be as desirous of having a polluted stream cleaned up as the public health engineers would be. Difficulties would arise in determining which agency should actually do the work and finance it. Such problems of diplomacy would be the responsibility of the governor and his budget bureau. Some problems of overlap in jurisdiction are inevitable, but most of them could be handled through the tact and statesmanship of a competent governor if the administrative structure were properly organized.

Slaughterhouses and rendering plants have long been recognized as potential nuisances. The state bureau should have very broad powers of regulation with respect to them. Local authorities would be particularly interested in co-operating with the state in this regard.

Industrial concerns that dump wastes into rivers and lakes need to be restrained and compelled to dispose of their wastes in ways that will not menace public health. Artificial-ice plants and dairies need to be obliged to install certain equipment and to respect certain regulations in the interests of public health. Here again the bureau of public health engineering is likely to tread upon the preserve of another department—for the department of agriculture would have an interest in dairies. The responsibilities of the public health engineers would need to be very clearly defined if friction is to be avoided between the two departments. It is virtually impossible to lay down hard and fast rules that will guarantee avoidance of conflict. Hope of doing it lies in having a well-organized administrative structure, a statesman-like governor, and reasonable men in charge of the respective depart-

ments. Under these conditions methods of co-operating effectively will develop, precedents will be established, lines of responsibility will be clarified, and difficulties overcome.

Some of the newer duties of a bureau of public health engineering in a department of health would have to do with the inspection of swimming pools maintained by the municipalities or by private persons. Certainly, regulations should be applied to them. Sanitary arrangements at tourist camps and amusement parks, particularly at those outside the boundaries of municipalities, would fall within the range of a bureau of public health engineering. No one can foresee what new and important responsibilities may arise in the future for the public health engineer. The state should be prepared to assume these new responsibilities when they appear.

There is no department of state administration that is likely to have as much inspectional work to do as a department of public health. At least this is potentially the case. If a department of public health were to carry on all the inspectional work which it might very properly perform, it would certainly need to maintain a large staff of inspectors. But numerous other departments also maintain such staffs. Again and again the legislature has provided for some new service, or has authorized the extension of some old service, which involves inspection; until now it has come to pass that a very large number of people are out upon the highways of the state, travelling from city to town and out through the countryside investigating this or that. Business men and others who are the objects of inspection have sometimes become very much exasperated if not actually hostile toward the departments out of which these inspectors operate.

The student of administration has an interesting problem before him in this connection. It is not exactly a problem of integration, as that word has been used in these pages; it is a problem of reducing overlap and duplication of effort in the interests of economy. In one sense the principle of sound integration is respected when a department of public welfare sends its inspector into an orphanage to see that the institution is properly managed, while the department of health sends its representative into the same institution to see that the sanitary arrangements are satisfactory, and the department of commerce or labor sends an inspector to see that the building code has been respected, and the state fire marshal's office sends another man to inspect the fire escapes and to investigate the fire hazards. These various inspectors may actually encounter each other at the very doors of the places they have come to examine. The inspector from the department of welfare is definitely concerned with the management of



the orphanage—a very proper function. The health inspector is truly remaining in his field, where he belongs, and so are the inspectors who are concerned respectively with the building codes and with fire hazards. Fundamentally the services may be properly integrated, separated, and consolidated into suitable departments of administration; yet here is an obvious problem of overlap and duplication of effort.

Certain business, industrial, and professional people tend to become indignant victims of this situation. State inspectors come to investigate the goods on their shelves, to see if the doors open outward, to see if the plumbing is good, to test scales and pumps and measures, to check up on the ventilation, to see that elevators and other dangerous machinery are properly safeguarded, to see that there are plenty of places for women workers to sit down and rest, to see that the hotel bed sheets are as long as the law says they shall be, to test the beverages from the fountain, to examine the equipment in the kitchen, to measure and weigh a loaf of bread hot from the oven, and to do a variety of other things.

This sketch of typical activities has not by any means been intended for purposes of ridicule. Each of the services mentioned is perfectly proper and ought to be carried on by any state. The evil situation tends to arise out of the fact that the various services are set up at different times, and that it becomes very difficult indeed to co-ordinate the inspectional activities in a thoroughly sensible manner.

The remedy is by no means so simple as it seems to the casual observer. It would indeed be comparatively easy to make a complete list of all places and establishments that need to be visited for any purpose at all, and to enumerate the tasks of inspection. And it would be a fascinating problem to work out routes and time schedules in order that all places would be visited, and all inspections made, with a minimum of time and effort. But this is to ignore realities. People cannot be found who possess the combination of qualities necessary to do the various kinds of work involved. The man who inspects steam boilers cannot be expected to test the medicines on the druggists' shelves. The man who examines fire escapes cannot be expected to pass judgment on the sanitary arrangements in a restaurant kitchen.

Merely to present these illustrations is to hint at the proper way to approach the problem. A careful analysis of the various activities needs to be made. If this were done, it would soon be apparent that certain groups of inspectional functions could very properly be carried on by persons who possess certain qualifications. One qualified to pass judgment on matters of ventilation could do so with respect to a hospital for the insane, an iron foundry, or a bakery. Presumably it

would not be necessary for the department of welfare, the department of health, and the department of labor each to maintain a staff to do this work. An inspector of hotel kitchens, responsible to a department of agriculture, might properly include restaurants, bakeries, and other establishments in his itinerary. He could be removed from the department of agriculture and put where he more properly belongs.

This problem could be solved by the central bureau of personnel administration, as was explained in the chapter devoted to that subject. It has seemed fitting to discuss it here because many of the services ought properly to be organized under this department. In the department of health there ought to be a bureau of inspection under the direction of a chief who would possess many of the qualifications appropriate to a director of personnel administration. He should organize staffs for the purpose of maintaining all manner of inspectional services that were clearly related to public health and sanitation. No doubt it would be unwise to adhere literally and uncompromisingly to this idea. Common sense would dictate certain deviations from the rule, but the guiding principle is clear. The department of health should be responsible for prescribing uniform rules, regulations, and standards relative to health, and should control the inspectional services maintained for purposes of enforcing its demands. This plan is in harmony with the principle of integration.

No attempt can be made here to enumerate and clearly define all these services. Besides, they would not be the same for every state. All that will be attempted here will be to indicate some of the inspectional services that might well head up in a typical department of health. It would seem that one unified staff could be concerned with enforcing regulations that involve problems of ventilation, lighting, and plumbing in all buildings, public and private, which the state might undertake to inspect. This would include all sorts of public and private eleemosynary institutions, schools, theaters, factories, hotels, bakeshops, and tenements. This staff would not be concerned with safety devices on machinery, nor with fire hazards, nor with other matters not directly related to health.

Another unified staff of inspectors would be concerned with the purity of foods and beverages. They would visit all institutions where food is handled and dispensed, so far as the state might have occasion to investigate. This might mean merely hotels, and it might mean every restaurant, bakery, wayside lunchroom and soft-drink parlor in the state. Another staff, working in close co-operation with the bureau of public health engineering, would be concerned with slaughterhouses and rendering plants, sewage and garbage disposal

systems, and other such establishments. Another staff would be concerned with enforcing the regulations relative to the adulteration of medicines, drugs, and canned or bottled goods. Other state agents might be concerned with standards of cleanliness in barbershops and beauty parlors. Milk depots and dairies fall so clearly within the purview of a department of agriculture that perhaps they should be left wholly to that department. At any rate, enough has been said to make it clear that inspectional services related to public health could be coordinated and unified in such manner as to eliminate much of the overlap and duplication of effort now apparent in many states.

There is no limit to the extent to which all these services might be carried. It is easy to imagine them carried to absurd and impracticable lengths. There are some people, particularly among those whose property and activities are subject to supervision, who believe that government has gone already too far along these lines. It is generally believed, however, among those who are closest to the problems, that in most states the inspectional services are wholly inadequate to accomplish the purposes envisaged by the legislature.

The general public is likely to be more or less apathetic and uncritical. It assumes that once a good law is passed, the ends for which it was drafted will immediately be fulfilled. This is far from being the case. An excellent law may be passed, imposing upon the health department the duty of prescribing a code of regulations in the interests of some phase of public health. The board of health adopts some sensible and enlightened regulations. Here the matter ends if there is no adequate inspectional service, followed by aggressive prosecution when necessary. Many a good law is virtually a dead letter because of weakness at this point. There may be so few people engaged in the work that one person is obliged to cover altogether too much territory and so is able to call only at very long intervals. His infrequent visits tend to become perfunctory, casual, hurried, and largely useless.

In the absence of proper supervision from above, the inspector may fall into the habit of doing no more than stop for a brief chat with the proprietor whose premises he is supposed to investigate; his tour of inspection becomes nothing but a series of casual visits. If he is susceptible to bribery, the situation of course becomes very bad indeed. Altogether too often the people who do the work are thoroughly incompetent, and as has been pointed out elsewhere, the incompetent person is likely to take refuge in inaction or in doing whatever is least likely to expose his own incompetence. Obviously the action least likely to expose his incompetence is perfunctory approval of what he has seen, or rather, of what he has not seen. Thus the service deterio-

rates and the good law and the good regulations are of no avail. To the public, the law and the regulations seem good, the administrative machinery seems to be working, but conditions continue to be bad. This is why administrative machinery needs to be properly organized and why a merit system of appointments is needed. The chief of a properly organized bureau of inspection would see to it that only competent people were on his staff, that they were not overburdened with more work than they could do, and that they did their work properly. Only when such is the case do good health regulations become worth something more than the paper on which they are written.

In discussing the work of the attorney general's office it was pointed out that one of the important problems was that of supporting the line agencies of administration with aggressive prosecutions. This matter becomes especially important to a department of health. Resistance to the enforcement of regulations is likely to be encountered at many points. Nothing could be more discouraging to an efficient and conscientious inspector than to find that nothing comes of his adverse reports on the bad conditions he discovers. His first duty, of course, is to discuss the situation thoroughly with those who are responsible for the bad conditions, to make clear what is wrong, to point the way to improvement, and to give specific warning. If the conditions are not improved, and if he is helpless to do anything further, his position becomes intolerable. He is in danger of losing not only the respect of those whose premises he inspects, but his own self-respect as well. He takes refuge in silence and in doing his work perfunctorily.

It is a mistake to put too much responsibility for enforcement upon the investigator. He is neither a lawyer nor a policeman. His duty is largely done when he makes a thorough investigation and files adequate reports. Nor is it wise to rely upon the local county prosecutor. His prime interests lie in other fields, and political considerations often serve to make him delinquent in enforcing state regulations. There should be a division of enforcement in the bureau of inspections in charge of an attorney assigned to that post by the attorney general and ultimately responsible to him. Adverse reports from the inspectional staff would go to this division. It would be the duty of this legal division to send prompt and clear warnings to those who were found to be delinquent. If necessary, prosecution would follow, and in this the office of the local prosecutor could usually be relied upon to co-operate since the onus of initiating the proceeding would rest with the state office instead of with him.

Ample opportunity for appeal from the inspector's opinion should be afforded to the private citizen affected. A special board of appeals or other machinery for handling such appeals should be set up in the department of health itself. If the final ruling was against the private citizen, however, the prosecution should go forward aggressively. Having exhausted his opportunities for relief within the administrative department, the citizen and the department itself would have to leave the disputed question to the courts.

In this connection it should be realized that when administration is good, resort to the courts would be rare. If the department had a reputation for fairness, and also for inflexible determination, a mere warning from the inspector would dispose of most cases. An emphatic communication from the division of enforcement would take care of most of the others. An administrative hearing would conclusively settle many of the remaining cases. Thus, because of this process of sifting, only the most difficult and controversial cases would finally get to the courts. The reason for this is obvious. The decision of the department would usually be accepted as final, not because the department had conclusive power, but because in a great majority of cases the department would be right, under the law. In consequence, recourse to the courts would be looked upon as futile. Administrative departments should not have arbitrary power to destroy people's property and to interfere with their liberty of action. They should, on the other hand, stick to the law, and be correct in their interpretations. If the law itself is unsatisfactory, the remedy lies with the legislature.

The work of four important bureaus in a department of public health has been discussed. A fifth one could be a bureau of licensure. It has long been recognized that doctors of medicine should be licensed by the state to practice their profession. Standards of professional attainment have been established and are likely to be pushed even higher than they are today. Dentists should be required to secure licenses, and also those who practice a multitude of other professions. The list of professions to be brought under the licensing power of the state seems to grow longer every year. Obviously not all the professions should come under the jurisdiction of the department of health. Public accountants and electrical engineers scarcely belong there. It is apparent, however, that a large proportion of the recognized professions have to do with serving the public in ways that are definitely related to problems of public health. It is proper that all who wish to practice these professions, and those who want to engage in such a business as barbering, should go to the department of health

to secure licenses to do so, and should be subject to having their licenses revoked if they do not conform to the standards imposed.

A bureau of examinations and licensure should be concerned with licensing doctors of medicine, dentists, osteopaths, chiropractors, optometrists, podiatrists, nurses, embalmers, barbers, cosmeticians, midwives, pharmacists and others engaging in similar activities. Such a list cannot be complete, since new professions are emerging that must either be suppressed by law or given a dignified place in the array of recognized professions that are in some way related to public health. It was a long hard struggle for the osteopaths and chiropractors to gain such recognition. Psychiatrists today are seeking an independent status not accorded them in many states. Certain businesses and professions are so closely related to other departments of administration that there might be a reasonable doubt as to whether or not they should come under the department of health.<sup>12</sup> Veterinarians and plumbers fall in this category. The state veterinarian is likely to be found in the department of agriculture, but certainly his work has a most important bearing on public health. There would seem to be no good reason why all those who are required to secure licenses from the state, and whose work clearly affects public health, should not come to the bureau of examinations and licensure in the department of health to get their licenses.

The functions of this bureau would be almost wholly of a ministerial character, that is, would involve the exercise of little or no discretion or authority. The law should provide for examining boards and those who passed the examinations would receive licenses to practice, as a matter of course. This has been a serious matter to some of the newer professions. It is important that people who seek licenses to practice should not be obliged to pass examinations and to meet standards set by members of a board who are definitely hostile to their profession. In some states the medical profession has been distinctly hostile to the osteopaths and the chiropractors. If the state board of health, dominated as it is likely to be by doctors of medicine, has authoritative control over the process of examining and licensing osteopaths and chiropractors, it is obvious that unfortunate complica-

<sup>12</sup> "The carrying of this licensing practice to its logical conclusion leads to absurd results. There are many lines of human activity in which expert service is as important as in most of those listed above. Is the process of creating new boards to be continued until there are examining and licensing agencies for newspaper reporters, printers, bricklayers, carpenters, metal-workers, garage mechanics, and the thousand and one other specialists of our complex civilization? There is scarcely a session of the state legislature in which some new group does not come forward with a request for licensing and regulation." Walker, *Public Administration in the United States*, pp. 622, 623.

tions may arise. Applicants for licenses to practice these newer professions would be certain to feel that they were not receiving fair treatment. Such an arrangement is altogether unsatisfactory.

Not only do the members of those professions toward which the doctors of medicine have been at least not cordial, demand an examining and licensing process free from the control of doctors of medicine, but other professions and businesses have also demanded a similar freedom and independence. Thus, prospective dentists want to be examined and licensed by a board composed of practicing dentists. Undertakers and embalmers expect to be examined by undertakers and embalmers. And so on through the list.

If this idea were followed to its logical conclusion, it would of course mean that members of a given profession would have absolute control over future admissions to their own practice. Conceivably this might lead to unwholesome monopolistic tendencies culminating in the entrenchment of virtually closed corporations. On the other hand the practice might lead to an undesirable lowering of standards. There is little evidence to show, however, that either of these conditions has been brought about in states where members of each profession have full control over the examination and licensing of applicants. Members of the professions have not sought to close their ranks arbitrarily against newcomers, and, on the other hand, there has been sufficient professional pride among practitioners to prevent an unwholesome lowering of standards.

Nevertheless, the student of administration cannot but view with some misgiving the tendency to permit each profession to determine for itself the qualifications to be required of those who wish to enter the profession. How to set up proper safeguards against the abuse of such a prerogative, on the one hand, and how to protect the members of one profession against the jealous resistance of members of another profession, is something of a problem. This is so because the layman knows so little about the matter. Laymen can be relied upon to serve as a balance wheel, and to assume responsibility for resolving controversial issues that arise in such fields as public education, public welfare, agriculture, and public works. The opinions of experts in these fields are very important, and should for the most part be respected, but the layman also is not wholly ignorant and helpless in any one of these fields. He is quite capable of making intelligent decisions with respect to broad questions of policy, and thus he is very useful on many departmental boards. But of what value is his judgment concerning the sort of examination that should be passed by a candidate who wishes to practice dental surgery, or concerning the question of whether or not

psychiatrists should be obliged to pass examinations in the so-called basic sciences? It is clear that while the layman can play a very useful role in many areas of administration, even where the experts and specialists have developed their techniques, he is more or less useless in the particular area now under discussion.

The following suggestions are offered as a fairly satisfactory approach to the problem. The legislature itself must determine what practitioners and business operatives must be licensed. Professional men may believe that a legislature composed of laymen is not competent to pass judgment on the merits of psychiatry or osteopathy, but there is no other proper authority to pass upon the question of professional status. Of course the legislature would have the benefit of, and probably would be largely influenced by, the advice of the board of health. But if the legislature decided to give professional status to Indian herb doctors or to mental telepathists, and to provide for licensing them, the board of health would have to accept the situation. In other words, the board of health should not have power to determine professional status, or to control the process of examining candidates who wish to practice.

Separate examining boards need to be set up for each field in which licenses are to be required. These boards should be composed of three or five members, one member retiring each year. Board members should be experienced practitioners in their respective fields. The governor should make the appointments without the interposition of senatorial consent. In those fields in which there are incorporated state associations, such as the state medical and dental associations, the association should have a right, defined in law, to submit nominations to the governor. He should not be obliged by law to confine his selections to the names thus submitted, but without doubt he would do so in the majority of cases. Public opinion should take care of that.

The examining board should have power to provide for examinations and to recommend applicants for licenses. The office of the chief of the bureau of examinations and licensure would be responsible for all the clerical work and for the keeping of records. Licenses would be granted through this bureau, on the authority of the board of health. It must be admitted that with such machinery there would be virtually no defense against the possible tyranny and arbitrariness of an examining board. Relief would necessarily wait upon the pressure of professional opinion, the influence of the board of health, and a sensible governor. Licenses would be revoked by the board of health, under regulations adopted by the board, which would provide for adequate hearing. It is altogether probable that the facilities of the



central bureau of personnel administration could be utilized in connection with the actual conduct of examinations.

In addition to the five bureaus already suggested for a department of public health, there should no doubt be set up a small bureau of maternity and infant hygiene. It is altogether probable that the federal government will continue to make substantial grants-in-aid to those states that are prepared to carry on the sort of work with which such a bureau would be concerned. This would consist chiefly in maintaining a staff of advisers in the field who would consult with local health authorities and conduct regional clinics to the extent that financial support would permit.

There should also be a bureau of local co-operation in the department of health. Certain of the other bureaus would have definite contacts with local authorities, as has already been pointed out, and the dangers of overlapping authority should be avoided. The bureau of local co-operation should be concerned with what the title implies—co-operation, advice, and help—rather than with authoritative control.

### COUNTY HEALTH UNITS

Every county should have a well-organized health unit. At present there is considerable chaos in the organization of local public health administration. Boards of township trustees in some cases function as boards of health; municipalities, large and small, have their boards of health and health commissioners. School districts are permitted or compelled to maintain limited health services. Overlapping them all are county health organizations and numerous private agencies active in this field. A good program of local government reorganization would include the establishment of one comprehensive county health unit designed to absorb all except private agencies. Health problems are not confined to township, village, school district, or city boundaries. Much confusing overlap in jurisdiction, conflict of authority, and duplication of effort could be eliminated by consolidating all public health activities in one office; doing this would achieve efficiency and economy. It would also greatly facilitate the work of the various state bureaus. A county health unit would be organized along lines much like those of the state department. A county board of health would be organically integrated with the county governing board by having a member of the latter board sit on the county board of health. This board would employ a county health officer of high professional qualifications. As many bureaus as might be necessary to carry on the local public health activities would be organized under his direction. A

detailed discussion of these activities is beyond the scope of this work. The state bureau of local co-operation would be very helpful, however, in selecting competent personnel, in advising as to the methods to be pursued by the local bureaus, in devising forms for making reports and ways of keeping records, and in helping to solve the multitudinous problems and difficulties that are sure to arise. The usefulness of such a bureau would depend largely upon the character, tact, and resourcefulness of the chief in charge of it.<sup>18</sup>

Since the early part of the present century there has been some movement in the direction of establishing county hospitals. The idea was good. There are enormous rural areas, including a great number of small municipalities, in which hospital facilities are so remote as to be virtually inaccessible to large numbers of people. A comprehensive state program of public health certainly should contemplate making hospital facilities more readily available than they now are. The county hospital idea does not meet this need, and these institutions have appeared chiefly in those counties that have become fairly well urbanized. This is no great help to rural areas and small towns. One chief reason why the county hospital does not meet the situation is that comparatively few counties in the rural areas provide enough patients to make the maintenance of a properly equipped hospital feasible. Another reason is that the extension of the highway system has made it possible for a considerable number of people in rural areas to reach the big city hospitals, and this they want to do if possible. But there still remains a problem. How should the state attempt to deal with it?

#### IOWA STATE HOSPITAL

So successful has been the method pursued by one of the states that it is not out of place to discuss it here in some detail. In 1924 the State of Iowa received a grant of \$2,250,000 from the General Education Board of the Rockefeller Foundation, for the purpose of erecting a hospital. Although the unique objectives of the project were clearly

<sup>18</sup> "We are at present passing through a transitional stage in state health organization. The logical course is to develop each local governmental health service in the state to a point where the state will act only in an advisory and correlative capacity, with a purely nominal supervision of local programs. This stage has been reached in the case of many of the large cities. Many local jurisdictions, however, particularly in the rural areas, possess little or no local health organization or personnel. In these areas the health service is sadly deficient. State health administrators have realized this deficiency, so that in recent years a very large proportion of the efforts of many state health departments have been devoted to the development of efficient local health departments, particularly in the smaller cities and rural areas." Smillie, *Public Health Administration in the United States*, p. 342.

understood by all parties concerned, the details were not incorporated in any agreements of a contractual character. Virtually the only obligation on the state was that it contribute an equal sum of money toward the project. Unqualified control remained with the state. This grant made it possible to erect one of the finest hospitals in the United States. It is located at Iowa City, on the campus of the state university. The hospital is under the control of the university authorities and is the principal unit in the equipment of the medical school. The hospital has a capacity of about seven hundred beds. It was opened in November, 1928.

The population of Iowa City and the surrounding area is less than twenty thousand, and there are no near-by large cities from which to draw patients to fill such an institution. Therefore measures were enacted by the legislature primarily to accomplish two purposes: (1) To fill the hospital with patients suffering from a variety of ailments so as to maintain clinics in connection with the work of the medical school, and so as to make this a first-class, outstanding institution of its kind. (2) To provide hospital care for the indigent at state expense, wherever they might live within the state. Incidentally, a very important service has been provided in that the hospital is made available to private patients who pay for their treatment and who are able to take advantage of the amazingly efficient transportation facilities maintained by the hospital.

Indigent people are committed to the hospital by the local district courts which hold sessions in every county. This feature of the system has not been entirely satisfactory. People apply to the local court for admission. At first the elected county attorney was, and now the elected county auditor is, responsible for investigating and reporting to the court on the financial circumstances of the applicant. Obviously this is not a proper function for any popularly elected county officer, whose principal duties and interests are far removed from such matters. Responsibility for this ought to be vested in the county welfare office which would always be very much concerned with the cases in hand. Interestingly enough to the student of administration, it came to pass that county attorneys and auditors did, as a matter of actual practice, virtually shift this responsibility to county welfare workers. The welfare worker recommends commitment to the county officer, who gladly accepts the recommendation and passes it along to the court.

Whether or not the applicant is really in need of hospital care is a question that is passed upon by a local physician appointed by the court, who receives a small fee for his services. Here lies another

weakness in the administrative process. The local physician is under overwhelming inducement to recommend commitment to the state hospital; and he can always salve his conscience with the thought that almost any person who is ill would benefit by hospital care. By recommending commitment he relieves himself and his fellow practitioners of the possible burden of giving treatment to a person who will likely never pay for it. Furthermore, he relieves his county of a charity case.

Having in hand the report of the county auditor concerning the applicant's financial resources, and the report of the physician concerning the desirability of hospital care, the district judge holds a perfunctory hearing, at which objectors may appear if they wish; but virtually none ever do. Sitting alone the judge decides whether or not to send the applicant to the state hospital to be cared for at state expense. The fact should be appreciated that he also is an elected official.

It would have required no profound student of administration to predict what would happen. The hospital was soon filled to capacity and there came to be a waiting list of approximately five thousand, with every indication that it would rapidly grow longer. The situation dramatically illustrated the difficulties that can grow out of an ill-designed administrative process. At no point in the procedure was an applicant likely to encounter serious challenge to his demand for admission. It will never be known how many people secured free treatment who were in reality quite able to pay for it. Doubtless many patients were needlessly sent to the state hospital. The officials who had the power to commit patients were not fitted for their task, and had every inducement, financial, political, and personal, to send applicants along.

Not only did the huge waiting list lead to terrific political pressure that could not be ignored, but it also soon became apparent that counties near the hospital were committing many more patients than were more distant counties. Johnson County, in which Iowa City is located, sent into the hospital over a thousand patients in one year, whereas remote counties of equal population sent fewer than one hundred each. Since the hospital was maintained by state funds, the resentment of taxpayers in remote counties can be easily understood. Many private physicians, as well as laymen, believed that a large proportion of the indigent cases being sent to the state hospital to be cared for at state expense might better have been cared for by private physicians in their own home counties, at county expense.

Angles of the controversy involving these and other controversial points need not be further developed here. It is enough to say that the

political situation became so tense that there was serious talk of abandoning the hospital and devoting the buildings to some other purpose. Such a major calamity was avoided, not by abandoning any essential feature of the service, but by making some simple changes in administrative procedure. A so-called quota system was adopted. The hospital authorities were by this time able to measure the capacity of the institution—the number of patients that could be cared for in a month or a year. Based on this measure, each county was allotted a number of indigent cases in proportion to its population. Thus each county was assured its “share” of the number of cases the hospital could handle, That is, a number of cases that would bear the same ratio to the whole number of indigent cases cared for at the hospital as the population of the county bore to the entire population of the state.

The effect of this simple rule was striking. Resentments, hostilities, political pressure, disappeared almost overnight. Of course the waiting list promptly disappeared, since the allotted quotas did not make it possible for more patients to be committed than could be received. After a county had sent its quota of patients, plus a small number of emergency cases allowed in addition, the county itself would be obliged to pay for the care of any additional patients. Now there was a strong inducement to exercise discrimination and restraint in sending patients to the state hospital. The county authorities would be concerned with keeping their number of commitments down, in order not to exceed their quotas. They would also be concerned with sending to the state the most difficult and expensive cases, and with keeping at home the less serious ones to be cared for at county expense. This was gratifying to private physicians, for they had resented—with good reason—seeing simple cases like tonsilectomies sent across the state when they could as easily have been cared for at home.

At first the near-by counties found it difficult to remain within their quotas. But that was finally accomplished, and the system now works smoothly. This is all the more interesting to the student of administration because the solution was not truly a rational one. Counties do not have indigent sick people in proportion to their population. A rich county and a poor county might have the same population, and thus the same quota of patients. But the rich county might not even find it necessary to fill its quota, while the poor county—the one least able to pay—would have to run over its quota, and in addition find it necessary to care for a lot of cases at home. It is singular that an inequity of this sort does not seem to impress the public in the least. People do become indignant, however, if their localities do not share in benefits extended by the state in proportion to *population*. This

reaction always appears in connection with state aid for any one of the local services.

In the interests of good administration, the process of commitment should be changed so as to vest entire responsibility in the local welfare unit, and to eliminate the court function and the elected county officer. The function is not properly a judicial one, but is instead truly administrative in character.

Nevertheless, the state hospital program has been a great success. In 1936 there were 14,011 "state" cases cared for at the hospital, coming from every county in the state. This number represented about 86 per cent of the total number of cases treated. The remainder were private patients who paid for treatment. These are divided into two classes—those who pay the mere cost of their care in the public wards, but who do not pay for physicians' services, and those who pay full rates and have private rooms. Thus the state hospital serves the interests not only of the indigent, but of other people who wish to take advantage of it.

The transportation system is worthy of special mention. A fleet of twenty ambulances is maintained operating day and night throughout the state. A traffic clerk arranges the routes. Outgoing ambulances take patients to their homes, and on their return bring other patients to the hospital. Each ambulance is equipped with a cot, and accommodations for four other people who are able to sit up. Sometimes one of these is an attendant. Ordinarily a patient who, by appointment, is ready in his home by ten o'clock in the morning, anywhere in the state, can be reasonably sure of arriving at the hospital on the same day—before dark. An average of more than 1700 patients are transported each month.

The ambulance system was instituted on April 22, 1932, with two homemade vehicles to transport patients who could not travel any other way. From that modest beginning the service has expanded into a transportation system that is almost in a class by itself. Skillful routing and systematic arrangements for picking up and returning patients result in new economies each year. As the service has been extended, the actual cost has declined. In 1934 just twice as many indigent state cases were cared for as in 1928, and there had been no increase in cost.

Much more could be written about this hospital and its service to the state.<sup>14</sup> It seemed fitting to discuss it here because the project has been a notable contribution in the field of public health. It also illus-

<sup>14</sup> The foregoing data were secured from pamphlets and reports issued through the office of the State Hospital at Iowa City. Such information is currently available.

trates a number of interesting problems of administration. Some of them have been discussed. It may be further pointed out that the great success of this program illustrates the futility, if not the absurdity, of trying to lay down inflexible formulas concerning administrative organization and processes. One might reasonably argue that this service should be under the control of a department of health. An equally good case could be made out for having it under the department of public welfare. At first thought one would never think of having it under the control of a state board of education, yet the service has been developed under this agency and there are few who desire to alter the arrangement.

If the State of Iowa were to effect a comprehensive reorganization of state administrative agencies, the hospital could not but be affected by it. It seems there would be slight justification, however, for removing it from the administrative control of the university, whatever rearrangements might be effected. Central state bureaus of purchase and personnel administration would very properly have contact with the hospital management in connection with these matters.

#### RESEARCH AND PUBLICATION

A discussion of public health and the work of a state department operating in that field should not be brought to a close without mentioning at least the possibilities of a bureau of research and publication in such a department. Of course there should be one, even if it were manned by only one person with a single shelf of books before him. Probably in no field of administration would the activities of such a bureau prove to be of more practical value to the people of the state. In co-operation with the chiefs of the other bureaus, whoever might be in charge of research and publication would prepare and issue bulletins on various phases of public health. These would be particularly useful to this department for they could make clear to the public the need for the regulations and services which it would be the duty of the department to maintain.

## CHAPTER XIII

### AGRICULTURE

WHAT to do about agriculture has been a difficult problem of national import for many years. The ramifications of the problem have been multitudinous and complicated. They have led to the widest differences of opinion as to how solutions should be sought, and have made of the problem a baffling political issue. Such a turn of events is always bad for administration. Administration is at its best when objectives are clearly defined and when the administrator's problem is that of working out the best means of accomplishing the end sought.

Whenever the activities of an administrative department are deeply enmeshed in political controversy, the administrator becomes a victim of tormenting forces that tend to nullify his best efforts. He is assailed with unfair and prejudiced criticism. He is falsely charged with evil-doing and incompetence. Obstacles are thrown in his path, and underhanded attempts are made to defeat his efforts and to discredit all his works. In his honest endeavor to do efficiently what the legislature has decided should be done, he stirs the wrath of a formidable opposition and finds himself in the midst of political turmoil that is calculated to distract his attention from his main task and to sap his energies. The morale of his department is likely to be undermined. Disloyalty may develop among the members of his own staff in a peculiarly vicious form because the political situation makes it dangerous to deal with disloyal subordinates in an effective way. Really good accomplishments are made to seem bad; the capable administrator becomes discouraged and is tempted to abandon the struggle to others who find more joy in political strife than in efficient administration.

Never was this better illustrated than during the Roosevelt administration beginning in 1933. Whatever may have been the merits or demerits of the gigantic administrative undertakings launched during that period, those who assumed responsibility for carrying out the will of Congress were plunged into a political maelstrom that made good administration almost an impossibility. Badgered and assailed at every turn, various able men gave up their posts, and others directed



their energies largely to defensive propaganda rather than to good administration.

Fortunately for the states, political strife over the question of what to do about agriculture has been largely centered on the national stage. Naturally the repercussions penetrate more or less into state politics, but not with the disruptive force that has been apparent in the national field. The principal political issues involving agriculture must be threshed out in Washington, and it would seem that state departments of agriculture can largely escape the baleful effects of partisan politics.

Furthermore, state agencies of administration, which deal with various aspects of agriculture, have for a long time been deeply entrenched in the administrative structures of practically all the states. They have been doing work of a routine character that has met with general approval, and their principal activities have rarely produced serious political issues. This has made it possible to develop administrative techniques that are sound, to experiment peacefully in a modest way, and to mark out paths for future development.

Nevertheless it is not at all surprising that state administrative agencies concerned with agriculture have emerged in the same disordered fashion that has been observed in other areas, and that the services are not well integrated.<sup>1</sup> A state weather bureau is set up and does good work. A state veterinarian is provided for, and he goes about his tasks. Some laws concerning animal health or the sanitation of dairies may be enacted, and separate inspectional services are created to administer them. A subsidy is granted to an agricultural college and presently the educational institution is deeply engaged with services that might better be performed through a government bureau. Irrigation and drainage projects are undertaken through independent agencies. Conservation commissions, organized in a variety of ways, begin to emerge; and wholly independent fish and game wardens appear upon the scene.

Actuated by a desire to stop this growing procession of independent administrative agencies, state legislatures begin to thrust unrelated services into existing agencies. Presently a department of agriculture

<sup>1</sup> There is no uniformity of practice among the states with respect to the matter of organizing departments of agriculture. Furthermore, changes occur frequently. States that have boards tend to make use of the single commissioner, and vice versa. At present a dozen states have boards of agriculture. In about half of these the chief administrative officer is appointed by the governor, in the others by the board. In states where there is no board, the chief officer may be appointed by the governor, or popularly elected, as he is in about one-fourth of the states. In some cases the affairs of commerce, or labor, or both, are united with those of agriculture in a single department.

finds itself charged with the duty of inspecting soda fountains, or supervising the development of water-power sites, or prescribing safety devices to be used in coal mines.

Thus the evils of bad integration have crept through this whole broad field of administration until there is need for substantial reorganization in a considerable number of the states. Ironically enough, good administration in small areas actually has the effect of sidetracking efforts directed toward comprehensive reorganization. When each of many little agencies does its own work fairly well, and when there are no public scandals or clear examples of incompetence, the need for change is not clearly apparent. The public and the legislature may be quite unaware of the greater possibilities of better organization if the things that are being done in the old way, are, on the whole, being done fairly well. Such a situation leads to the cynical comment familiar to students of administration, that things have to get very bad before they can get much better.

If that is indeed true, perhaps the reformer will not have long to wait, for today comparatively few states are properly equipped with administrative agencies that can assume all the new undertakings and services likely to be demanded in the realm of agriculture. There is every indication that the public generally has become profoundly impressed with the need for extensive programs of soil conservation, the prevention of erosion, the conservation of water resources, the suppression of crop pests, and the better use of land. The federal government cannot carry the whole load; the states must do their share. And it is very important that every state have a suitable structure of administrative agencies ready to take on these new responsibilities. Indeed, it is quite possible that the federal government itself will apply the necessary pressure to bring about better organization in the states. It has done so with respect to highway administration, for the states were required to set up state highway commissions, or comparable agencies, as a condition for receiving federal aid. It is doing so with respect to welfare administration. Federal aid for ambitious projects in agricultural administration may be expected to be given only on condition that measures of reorganization be effected.

Every one of the states now has at least some agencies of administration that are concerned with agricultural problems. Most of the states have departments of agriculture, or secretaries of agriculture who head administrative agencies that might be called departments of agriculture. But these words are misleading. Because a state has a department of agriculture, one must not conclude that such a department is necessarily in charge of all agrarian services, nor even most

of them. Its chief activities may be of such character that they more properly belong in a department of health, while a conservation commission may be concerning itself with matters properly belonging in a department of agriculture. But certainly every state ought to have a department of agriculture, and that department ought to embrace practically all the services that are clearly related to agriculture.

#### BOARD OF AGRICULTURE

It would seem that a board should be in charge of this department. There are a great many questions of policy that need to be passed upon. To have a department of agriculture in charge of one chief administrator—a secretary or commissioner of agriculture for instance—is to assume one of two things: It is to assume that the legislature itself will determine all policies in considerable detail, and that the secretary will be a ministerial officer charged with routine executive work; or it is to assume that the secretary himself will be vested with large discretion concerning his official duties. Neither of these solutions is satisfactory; and either one of them is destined to prove still less satisfactory as the agricultural program expands.

The first of these alternatives is the one most nearly in harmony with the American tradition, and is, therefore, exemplified in the majority of the states. But to adhere to it strictly is to delay progress. Under such a system the secretary of agriculture tends to assume that his duty is merely to enforce the enactments of the legislature, narrowly construed. For example, the legislature enacts a law concerning the inspection of meat products. He enforces it. Numerous other inspectional services fall to his lot. He performs them. He is required to inspect weights and measures, to inspect oil pumps, and he does these things. In a word, so long as his duties can be clearly defined in law, leaving very little room for the exercise of discretion, the traditional view of the office is justified. The weakness in this situation lies in the fact that the legislature itself is not in position to enact elaborate, detailed regulations with respect to the numerous activities with which a department of agriculture ought to be concerned, and it very properly is unwilling to vest broad discretion in a single officer. Hence the work of the department is sharply circumscribed, and it tends to be concerned largely with mechanical routine duties. There is likely to be too little opportunity for the development of broad-gauge policies, and the fulfillment of the splendid possibilities that lie ahead in this area of administration. State departments of agriculture, and other agencies in charge of agricultural

interests, are cramped and held back because they are merely allowed to go through the routine of executing the letter of a statute. This is deadening. Of course it permits much good work to be done, but the fine possibilities of government service are definitely thwarted by a strict adherence to this practice.

It is desirable that a department of agriculture be vested with broad discretion, with power to work out comprehensive programs with respect to the needs of agriculture, that it be vested with power to make regulations and to enforce them, and with power to co-operate with private owners of farm land in order to carry through an effective program for its development. It should be vested with power to serve the farmers in scores of ways that competent students of their problems have learned. There must be room for experimentation, which means discretion in the matter of policy; and there must be opportunity to decide, within limits, what to do and what not to do.

This idea gives great alarm to people who profess to fear government by commission, and the delegation of legislative power. There is indeed danger of carrying it too far. The alternative, however, is stagnation. Ultimate authority and absolute control of the purse strings must certainly remain in the legislature, but administrative agencies can be released from their strait jackets without compromising the power of the legislature. One way to do this is to set up well-organized boards in the principal administrative areas, and to vest in them power and responsibility.

It is not generally appreciated to what extent this has been done in certain other fields. A good illustration appears in the realm of higher education. Legislatures do not prescribe courses of study for the university. Very few laws can be found stating what courses students must take, or what subjects shall be taught, and most of those that can be found ought to be repealed. Boards in control of the higher institutions of learning have been largely free to experiment, to authorize the development of new departments, to abandon others, to try new things, and thus to keep higher education abreast of the times. This makes for progress. Similar progress can be made in other areas also if administrative agencies are properly organized.

To be sure, the distinction between service and control must be noted in this connection. It is one thing for an administrative agency to render service to the public; it is quite a different matter for an administrative agency to enact rules and regulations that have the force of law and that affect the personal and property rights of citizens generally. A university is wholly concerned with service. It does not make rules which the people must obey, nor does it impair prop-

erty rights. On the other hand, when public health authorities close up a theater or enforce quarantine regulations, they are exercising control functions and necessarily impair personal and property rights. Even so, much broader discretion may safely be vested in administrative agencies with respect to service functions. A department of agriculture should be largely concerned with service. It is in this connection that power to determine policy should chiefly be permitted.

A board of agriculture should probably be quite large. Various agrarian interests might be represented in its membership. Certain industrial and business interests that are closely affected by agricultural policies should also be represented. Geographical distribution of the membership would be a matter of some importance. However, it is doubtful if the statute creating the board should prescribe in detail with respect to these matters. The pressure of public opinion and the influence of the senate in passing upon appointments ought to be sufficient to induce a governor to take account of such considerations. A board of nine members, appointed by the governor with the consent of the senate, for terms of six years, three of whom go out at two-year intervals, would be a suitable agency to put in charge of this department.

The board would select its chief administrator—a secretary of agriculture—and he would exercise supervisory control over all the activities of the department. Obviously he would be strictly accountable to his board. He would consult with it concerning policies, and no doubt would assume a considerable degree of leadership.

#### BUREAUS IN THE DEPARTMENT

In this department there would need to be a number of well-defined bureaus, some of them perhaps being subdivided into small divisions. It is desirable to permit the board in control of a major department to enjoy considerable leeway in the matter of organizing bureaus and divisions within the department. This would be particularly true of a department of agriculture. Changing conditions and experimentation in various fields would indicate new and better ways of achieving efficiency and economy. The department should be free to seek these better ways, by means of internal reorganization. Thus no particular bureau and division setup should be viewed as static. And, therefore, it should be understood that the suggestions which follow are in a sense merely tentative. It is believed the setup suggested would be satisfactory. Other arrangements might be just as good.

A most important bureau would be one concerned with agricultural aid. It would be in charge of a chief appointed by the secretary and responsible to him. In this bureau would be found a division of entomology, devoting its attention to ways and means of controlling and suppressing insect pests that wreak such devastation upon crops and other vegetation. There is no end to the work that can be done in this connection and the service that can be rendered to the farmers, and indirectly to everybody. Activities would be limited only by the sums of money which the legislature might be willing to appropriate for it. A budget allotment for this work having been determined upon, the chief entomologist and his assistants would proceed under regulations and instructions adopted by the board of agriculture. They would study insect pests, and keep in close touch with scientists at the state agricultural college and with those who were working in the federal department at Washington. They would learn the best ways of dealing with the problems and so be prepared not only to give advice and to provide materials for fighting insect pests, but to render active aid in the field.

Some years their chief activities would be directed along certain lines and other years along different lines. In emergencies all energies would be directed upon one problem. There would need to be flexibility of control. The board should have power to authorize changes in practice and activity as the situation might require. The board should also have considerable leeway in the matter of financial allotments. It is absurd that a state entomologist should be tied down by statutes to do certain routine tasks of relatively little importance when desperate need appears for the devotion of all his energies to some unanticipated problem. It is equally absurd that state experts must stand helpless before an oncoming hoard of chinch bugs because the rigid appropriation law does not permit the purchase of some thousands of dollars' worth of chemicals with which to stop the pest. It is scarcely an exaggeration to say that this agency of administration needs to possess the flexibility of a fire department—the power to go where the need appears and to do what needs to be done.

No one knows how much wealth can be saved by the activities of a department of agriculture in this sort of work. If, under an antiquated administrative setup, an independent state entomologist sits alone in his office, poring over books and producing a scholarly report from time to time, and if he is wholly without power or money to render immediate and effective aid, the ravages of insect pests go forward, checked only by the feeble efforts of individual farmers.

They are cheered on with a printed pamphlet, when what they need is supplies and invigorating supervision and direction.

There is no intention in these words to belittle scholarly investigation and study. That should always be under way. The point to be made is that state departments of agriculture should be so organized as to be ready to serve the state in the best possible way when need arises. Crop pests can be a dreadful menace. Diseases that afflict fruit trees and many other growing plants cannot possibly be dealt with adequately by private owners. In the interests of the entire populace the state must assume responsibilities here and do the things that scientists have learned to do when faced with these problems. The legislature can set up the administrative agencies, authorize the work, and make appropriations; it is the business of administration to do the task.

A department of agriculture would need some control powers in the work of suppressing crop pests and plant diseases. The scope of these powers should be clearly delimited by law, but within these limits the board of agriculture should be empowered to issue specific regulations and orders. Here again appears the need for a board. A single officer is not likely to be vested with very broad powers, and probably ought not to be. To formulate, to issue, and to enforce orders that might require farmers to destroy infected crops or trees, to respect quarantine or definite other restrictions, and to do various other things that might be necessary or appropriate in order to cope effectively with a situation, falls within the jurisdiction of the board of agriculture. Much broader discretion could properly be vested in a board. The secretary's advice and suggestions would be very important, but he should not have much arbitrary power of this character; nor could a legislature readily write into a statute the regulations that might be needful in a given situation.

The bureau of agricultural aid would be concerned with studying the diseases that afflict farm animals. This could be the duty of a division of animal health. The city dweller ordinarily has little appreciation of the extent to which farm creatures are subject to disease. Hog cholera, bovine tuberculosis, and hoof-and-mouth disease are merely some of the most widely known infections to which farm stock are subjected. Detailed laws concerning the control of these diseases, and some others, are to be found in the statute books of many states. State veterinarians have explicit powers to do exactly this and that, when given conditions obtain. They do good and useful work, but they need broad powers to deal effectively with an ever-

changing situation. The legislature cannot go into the details. The bureau of agricultural aid, subject to the regulations adopted by a board of agriculture, should be prepared and competent to deal with all manner of diseases. It should be ready to give advice and help of a very practical character, and should constantly be studying better ways of dealing with multifarious problems. The state veterinarian would be a member of this bureau, and would not be an independent officer looking to the statute for his powers and duties. He would be responsible to superiors for doing the various things that had been authorized by the board.

Again it may be said that the only limits to activities in this field would be those fixed by the amount of money made available. The board of agriculture would see to it that allotments made for the suppression of disease among farm animals were used to the very best advantage.

Control functions are indicated even more clearly in the case of suppressing disease than was true in the matter of controlling crop pests. The department would need to have power to require the vaccination of farm stock, to order the destruction of animals in certain cases, and to enforce quarantine regulations. This is a troublesome problem. A great many owners of farm animals do not appreciate the seriousness of disease and the menace it holds. They do not understand the necessity for vaccination and other preventatives. It is often very expensive and they can be counted upon to resist it to the utmost. The strong arm of the state is required to compel obedience to regulations. No doubt the law concerning this aspect of the department's work should be written in considerable detail. At least it should very clearly define the powers of the department.

Poorly designed laws, enforced by irresponsible political appointees, have more than once provoked resistance in agricultural regions that has approached organized rebellion against the power of the state. Incompetent state agents may go about in swaggering, arrogant manner and arbitrarily condemn stock and issue orders for treatment that are not at all justified by the circumstances. There is no remedy other than appeal to the slow and cumbrous processes of the court. Injunctions are issued and litigation follows. This is very bad for the morale of administration. It seriously undermines the confidence of the public, produces violent repercussions in the legislature, and is likely to result in greatly curtailing the usefulness of the department. These things happen particularly when state agents and veterinarians are appointed on political grounds and are not responsible to superior authority.



Orders and regulations should emanate from a board, only after thorough discussion. These regulations should of course be well within the limits of power granted by the legislature. On this point the help of the attorney general's office would be useful. Those who inspect, interpret, and apply the regulations, should be carefully chosen through a merit system, and should be accountable ultimately to the secretary and the board itself. Under such a system it would seem that every reasonable safeguard against the abuse of power would be present. Not until such safeguards do exist can it be expected that departments of agriculture will be permitted to carry on the extensive work that might be done in the interest of suppressing disease among farm animals. The possibilities are enormous. As yet departments of agriculture have only begun the solution of the problem. Administrative agencies should be so organized that the state will be in position to take on new responsibilities and keep pace with scientific investigation.

In so far as giving aid and advice and rendering service are concerned, the department would always be well within its own domain. In connection with the making of inspections, however, and the issuance of orders, the department of agriculture would come into very close contact at many points with the department of health. It is not of concern wholly to farmers that stock should be free from disease. Bovine tuberculosis can be a very serious threat to public health in large areas. The department of health must be concerned with suppressing such a menace. Dairies and meat-packing establishments should be thoroughly inspected, not only in the interest of agriculture but also in the interest of public health. These problems transcend the proper limits of a department of agriculture.

This is the kind of problem that can produce great friction in administration. Various independent agencies come very close to treading upon the domains of other agencies. Seldom do such conflicts produce open ruptures of a character that find their way into the press or onto the floor of the legislature. When that does happen it is a fairly good sign that the situation has become very bad indeed. What is far more likely to happen is that the various independent agencies will play safe. Each adheres literally to the letter of the law under which it operates. Each is inclined to resolve doubts as to its authority to act in a given instance, by not taking action. In order to avoid what might prove to be ruinous attacks upon their own departments, administrative officers take refuge in strict construction of their own powers, and tend to leave questionable and particularly disagreeable responsibilities to other agencies. All this has a very

depressing effect upon administration, and tends to stultify administrators who can see important things that need to be done, but doubt their own responsibility for doing them. Responsibility ought to be centered, not scattered among several agencies. And what is more, those upon whom responsibility is centered should not be shackled and tied down, they must have freedom to do whatever the situation requires.

It follows that services which relate clearly and principally to public health should be the responsibility of that department. The department of health should maintain a well-organized investigation service entirely adequate to inspect farm premises and stock, and places where farm produce is handled, with a view to enforcing regulations in the interests of public health. The department of agriculture, on the other hand, should be concerned with ways and means of curing, correcting, and eradicating bad conditions. It is one thing to impose and enforce quarantine upon an agricultural area where the hoof-and-mouth disease has gained great headway; it is another thing to assist and direct in the work of stamping out the disease. The first responsibility should be that of a department of health; the second, that of a department of agriculture. It is one thing to condemn and to forbid traffic in meat that is infected and unsafe for human consumption, it is another thing to assume leadership in the matter of introducing ways and methods of handling meat, and of improving the health of farm stock. The former task is clearly concerned with protecting the health of the public; the latter, with giving aid and advice to farm owners and stock raisers in dealing with their own peculiar problems.

It is an easy matter to state these duties and thus to indicate a line of demarcation between the two departments. Let it not be supposed for a moment, however, that it would be easy to solve all the specific problems and jurisdictional disputes that would arise. At what point should the responsibility and power of the department of agriculture end and the authority of the health office begin? It would not always be easy to say. There would be plenty of room for legitimate difference of opinion. It is exceedingly difficult, if not impossible, to lay down exact formulas in the realm of administration. Nevertheless, with respect to the problem under discussion, it is believed that a sound guiding principle has been explained. Ultimately it would be the legislature that would undertake to delimit the fields of the two departments. Within their respective areas each department should enjoy considerable leeway and discretion with respect to ways and means of fulfilling its obligations and meeting its responsibilities. In

the absence of clear legislative mandate, the governor should have power to resolve jurisdictional disputes.

Much harm can be done by making a fetish of a principle of administration. A function clearly belonging to a department of health in accordance with the principle asserted above may actually have been performed for many years through a department of agriculture. A high degree of efficiency may have been achieved. The agricultural population may have become thoroughly accustomed to having this function performed through the department of agriculture, and the department itself may have won the confidence and esteem of the public to a very high degree, and have enlisted wholehearted co-operation on every hand. Such a state of affairs constitutes an inestimable boon to administration. It would be folly to jeopardize these hard-won blessings by arbitrarily applying a principle—in itself thoroughly sound—which would result in completely revamping all the existing lines of responsibility and control. Each situation must be judged on its merits. Of course existing administrative agencies are disposed to defend the existing setup on these grounds. Very often they are wrong. The existing service is not always notably efficient and economical; it is not deeply entrenched in the confidence of the public. There are no wholesome and precious public relationships to be protected and preserved. On the contrary, there may be contempt and a lack of confidence or even widespread dissatisfaction demanding improvement of conditions. It is then that sound principles of administrative organization need to be invoked, for they point the way to progress.

With all of these considerations very clearly in mind, it is suggested that certain activities which are quite generally carried on through departments of agriculture might better be removed to other departments. One of these services is that of enforcing pure food and drug laws in the interests of public health. While it may be done very well through a bureau in the department of agriculture, it would seem more properly to be the duty of a department of health. Certainly a department of health should be organized in such a way as to be able readily to take on this function, almost wholly one of inspecting and testing. A department of health should be fully equipped to do this sort of thing in connection with numerous other of its services, and thus it might well be charged with enforcing the food and drug laws.

Another service very frequently found in departments of agriculture is that of inspecting weights and measures. The various states have laws fixing the standards of weights and measures, the ton, the

bushel, the quart, and so on. There is great temptation for dealers to short-weight the public. Scales on which coal is weighed, scales used in grocery stores, tanks used for shipping fluids, and various other containers need to be inspected in order to see that fraud is not being practiced.

Obviously this function is only indirectly related to agriculture and, to a considerable extent, touches areas wholly apart from agriculture. In the interests of sound integration it would seem that inspection could more properly be exercised through a department that was primarily concerned with the regulation of business. It is sometimes urged that it should be exercised through a state police department. This matter was discussed in Chapter IV.

Testing kerosene, gasoline, and oils, or examining gasoline and oil pumps, is another similar function often exercised by departments of agriculture, even though it does not relate to that field. This function too could well be transferred to a department concerned with the regulation of business, or to a state police department.

There should be in the bureau of agricultural aid a number of other divisions, some of them quite small perhaps, but each of them performing some specialized service. It should be remembered that a division within a bureau may be nothing more than an office occupied by one person. If the service is highly specialized and not intimately related to any other service in any vital way, that fact should be reflected in the administrative setup. The office of state apiarist illustrates this point. His office is concerned with bee culture. In some states he is appointed by the governor and is wholly independent of every other agency. He may be appointed by the board of education.<sup>2</sup> It does not appear that he is popularly elected in any state. It would seem, however, that his office ought to find a niche somewhere in the department of agriculture, and that he should be ultimately responsible to and guided by the state board of agriculture.

The functions of this office need not be dwelt upon at any length. It should be a source of information and aid to those engaged in the industry, and should be responsible for enforcing any regulations which the department might be authorized to apply.

The chief of the weather service should also occupy a division in

<sup>2</sup> The Iowa law providing for the appointment of the apiarist by the board of education is as follows: "4036. APPOINTMENT—TENURE. The state board of education is authorized and directed to appoint a state apiarist, who shall work in connection with and under the supervision of the director of agricultural extension of the state college of agriculture and mechanic arts, the term of said state apiarist to continue during the pleasure of said state board of education. (C24, 27, 31, sec. 4036.)" *Code of Iowa: 1935*, p. 566.

the bureau of agricultural aid. This service is performed in all the states and is carried on in co-operation with the federal bureau. The character of the service is well defined and consists chiefly in making the necessary observations, and in issuing reports. As scientific progress is made, the services of this office will become ever more important. In a program of state administrative reorganization it is necessary merely to provide that the service be located where it properly belongs—in a department of agriculture.

Another division in the bureau of agricultural aid would be concerned primarily with soil analysis. This division, like the division of weather reports, would be interested solely in rendering service to the people of the state. A laboratory would be maintained—a laboratory, by the way, which could be used by other bureaus and divisions of the department—where samples of soil could be analyzed. On the basis of such analyses much useful advice can be given, advice with respect to the sort of crops that can be raised to best advantage, and advice with respect to fertilizers. A great deal of study and experimental work in this field is being carried on, and every state should maintain an administrative unit that would be up to date and adequately prepared to be of assistance to farmers. As has been said with respect to many other services, the work that can be done would be limited chiefly by the sums of money made available for the purpose.

Agricultural colleges are generally prepared to render service of this sort. Such arrangements are frequently quite satisfactory, and co-operation between the state department of agriculture and the agricultural college is certainly to be encouraged. But there is some danger of forgetting that the primary purpose of a state college is to be an educational institution and not a service agency for the performance of functions that more properly belong in one of the other great departments of administration. The evils of bad integration can emerge under the benevolent auspices of an institution of higher learning just as readily as they can in the political atmosphere of the statehouse.

There would be a poultry division in the bureau of agricultural aid, devoting its time and energies to such work as the title implies. Poultry raising is a highly specialized industry. A division in the state department would be able to give much assistance to those who are engaged in this work, and benefits would accrue to the entire state. Improved methods of caring for poultry, the proper construction of buildings, problems of sanitation, ventilation, lighting, and heating, have come to be important to a degree seldom appreciated by the

layman whose experience in the matter may extend no further than to an old-fashioned chicken coop.

Poultry raising has developed enormously in recent years and is destined to develop further. The state should be prepared to offer guidance, aid, and advice, and also to impose regulations in the public interest. These latter would have to do with suppressing and controlling the kinds of disease that afflict poultry, and the inspection and condemnation of fowl offered for sale in the public market. Here again, contact with the department of health would occur. A proper division of functions could be worked out, as was described in preceding pages. A state that neglects to develop administrative agencies to deal with problems of this sort is definitely backward and subjects its people to great loss in terms of both health and money. To say that a state cannot afford to maintain such services is to ignore these losses.

A dairy division would render similar service and exercise similar control for the dairy industry. Indeed, most states have long recognized the need for it. More control than service is likely to be required in this field than in others, although service should not be neglected. Helpful advice, guidance, and aid often tend to make authoritative control and suppression less and less necessary. To show well-meaning but uninformed people how best to handle milk and other dairy products may make it far less necessary to condemn the product and to rule it off the market. Thus a well-financed, well-staffed unit in the department of agriculture energetically rendering helpful service would greatly reduce the work of a department of health on the lookout for impure dairy products. And what is more, helpful service, pleasing to everybody, promotes wholesome public relations, while repression has just the opposite effect. A great many good people do not appreciate the dangers of impure food. Their own ignorance and carelessness must not be permitted to jeopardize the public health. But if the state can meet the problem by means of advice and guidance instead of by means of the strong arm of dictatorial repression, that is much to be desired.

So much can be done to produce pure foods that the imagination soon runs beyond the limits of practicability. The state cannot intrude into every barnyard to supervise the milking of every cow and the scalding of each milk pail. But it is enough to say that no state has by any means yet begun to do all the things that would be entirely practicable and worth while. Every dollar spent by the state should yield abundant returns in the form of real wealth and public well-being. Every state can at least maintain proper administrative agencies

prepared to spend wisely and efficiently whatever sums the legislature would be disposed to appropriate for the work.

An extension bureau in the department of agriculture could maintain contact with the county agents that are to be found in all the states. County agents are appointed by county governing boards that wish to co-operate under an arrangement made possible by act of Congress. The county agent is, in a sense, responsible to the local authorities who provide a part of his compensation. The rest of his salary is paid by the state and federal governments. This agent should be the local resident representative of the state department of agriculture, and able to assist in a variety of ways. Indeed, his office could be useful in connection with virtually all the activities discussed above.

Many kinds of extension work properly occupy the time of the county agent.<sup>3</sup> He demonstrates practical methods in agriculture; he holds educational meetings which have to do with various farm problems including rural home economics, the promotion of 4-H clubs,

<sup>3</sup> The actual field work of county agents is vividly described in *The Book of Rural Life* (Chicago: The Bellows Reeve Company, 1925) III, 1396-1403.

"In a country of such vast extent as America, with such widely different conditions of soil, temperature, rainfall, with products so diversified and with transportation and marketing conditions so unequal, it is not possible even to catalog the activities of the county agent or to give any concrete results of his activities that will be typical of anything more than the immediate region where the work described is going forward. The county agent covers the whole range of agricultural improvement and attacks farm problems from every angle. He conducts demonstrations in clearing land of stones, stumps and brush; in stopping soil erosion and waste by terracing and dams; in draining and reclaiming swamp land and in irrigation of dry land. He tests the soil for acidity and demonstrates the effects of fertilizers, makes plans for the better arrangement of fields and farmsteads, the location of buildings and the arrangement of the home. He studies the relation of soils, crops, livestock and markets and helps in devising farm-management schemes to develop a well-balanced, permanent agriculture with fair profits to farmers. He conducts demonstrations in planting, preparation of seed bed, breeding, cultivating, storing and marketing of all farm crops. He encourages the production of high-class pure seed. He also promotes the livestock industry through demonstrations in breeding, feeding, handling, housing and marketing all kinds of animals raised on farms. He promotes the orderly development of rural organization, educational, social and business. The above is only an enumeration of the broad aspects of the problems that confront the county agent. The number of different projects in the whole country amounts to several thousand.

"A single example will show the lines of county-agent work. Under livestock improvement the projects having to do with the single farm enterprise of dairying may involve work in breeding through bull associations, in directing boys' and girls' calf clubs, in securing and feeding balanced and economic rations, in barn management and equipment, in silo building and filling, in cutting, handling and feeding ensilage, in growing needed forage crops, in the use of milking machines, in the care of milk, in the manufacture of butter and cheese, in the control of livestock diseases and the use of sanitary methods, in the organization of breed associations, marketing associations, co-operative feed-purchasing associations and many others." W. A. Lloyd, "County Agent," *The Book of Rural Life*, III, 1402.

and agricultural experimentation in co-operation with private owners; he promotes contests in raising grain, vegetables, and livestock.

In addition to handling the publications of the department, the extension bureau can properly concern itself with problems of farm accounting. Few farmers have any clear idea of what accounting involves. Even the most elementary principles of bookkeeping are ignored by the rural population generally. Private concerns that are interested in agricultural financing are giving much attention to the matter. Methods of keeping books and financial accounts are being worked out; for a fee, some private concerns undertake to keep a farmer's accounts for him. Such service, of course, is of interest only to relatively large and wealthy farm landowners, and large absentee owners. Nevertheless the idea is an excellent one, and there is no reason why the elementary principles of bookkeeping cannot be adapted to the humblest rural establishment.

Intelligible and illuminating accounts should be kept for small farms as well as for small businesses. A little effort along these lines might help to shed light on the farm problem in its larger aspects. Certainly the possibilities could be explored by an enterprising bureau chief in the department of agriculture. Year after year many a farmer continues to raise crops that cannot possibly yield a return to him so great as might be gained if he used his land in some other way. The problem is greatly complicated by numerous factors that cannot be examined here, but intelligent accounting is one of the first steps toward solution. It may be said that many business men in cities are in need of similar aid. The state, however, cannot assume the task of keeping books for everybody. Nevertheless the agriculture problem is of such magnitude, and its solution is fraught with such important consequences to the entire population, that the state is justified in assuming a larger measure of leadership and responsibility in regard to it.

In most state departments of agriculture there would be need for a bureau of marketing and standards. Many states have laws concerning these matters that deal with the manner in which produce must be packed and labeled, and which define terminology. What is the content of a "No. 2" can? What is a "box" of apples? How large is a "barrel"? What is a "crate"? These familiar terms may need specific definition if the public is not to be imposed upon. To have terms defined by the state itself greatly facilitates trade and tends to eliminate misunderstandings about contracts, fraud, and misrepresentation; thus it obviates much troublesome litigation. The law may specify how fruit must be packed for shipment, and the sort of



containers that must be used in preparing various articles for the trade. It definitely establishes the significance of the word "grade" with respect to various sorts of commodities.

For many years state departments of agriculture have been concerned with fixing standards with respect to seeds and grain. This is highly desirable, and the idea can be applied with great advantage to many commodities that have not yet been dealt with by legislation. Not only is it desirable that states should fix standards in this way, but it is also highly desirable that states should co-operate and so far as possible adopt uniform standards. This whole matter of state co-operation has been discussed in an illuminating manner by Professor Graves in his *Uniform State Action*. Of course some states would find it desirable to go much farther than others in handling this problem. Some states would not need to be concerned with regulations for packing grapefruit, for example, but every state would need regulations about some commodities.

It is quite possible for legislatures to deal with commodity problems to a limited extent. Little imagination is required, however, to become aware of the fact that a legislature is in no position to deal with them in a thorough and comprehensive manner. Furthermore, any arrangements made should be flexible in nature. Industries are growing rapidly, and new and better ways of classifying and handling produce are continually being devised. As has been pointed out, there is an ever-present need for co-operation between the states. For these reasons, among others, there should be a board of agriculture instead of merely a chief administrator in charge of the department. The legislature itself cannot do what needs to be done, and a single administrator should not be invested with so much power. A board, guided by the advice and suggestions of administrative officers who are in close touch with the problem, could satisfactorily do what needs to be done. The powers of the board should be clearly defined in general legislation that would seldom need to be changed. Actual administration could be vested in a bureau of marketing and standards.

Another bureau in the department of agriculture might be concerned with regulations affecting warehouses and cold storage plants. There is much legislation concerning these institutions. Again it is desirable that legislatures be relieved of the burden of trying to deal with the details, and that flexible regulations be introduced. A board of agriculture could adopt a code of regulations, changing them as circumstances might warrant. The bureau would be concerned only with the actual administration of the code.

Agricultural statistics are very important. To a greater or less degree

they are now being compiled in most states. It is desirable that they be compiled in all states and that the work be expanded to much greater proportions than it has been. Thus, the need for a bureau of agricultural statistics is clearly indicated. In such a bureau one should be able to find all significant data about the agricultural productivity of the state. There should be intimate co-operation between this bureau and the general bureau of state records discussed in Chapter III.

#### ADVISORY BOARDS

In any study of the work of a department of agriculture, the possible uses of advisory boards should be considered. Though such boards may be used to advantage in many areas of administration, there is probably no field in which they can be better utilized than in agriculture. The problems are fairly well defined, and it is easy to identify various large groups of people who are vitally interested in what the department of agriculture does or does not do. Among these are dairymen, stock raisers, fruitgrowers, grain producers, and others, and there is no question of their primary interest in what the state does for them, or to them, as the case may be. To recruit advisory boards from their ranks would be a simple matter.

It must be remembered that there is a great and important difference between a board in control, exercising real authority, and an advisory board. As has been said above, the agricultural board should have real power and authority. Its members should be appointed by the governor; they should be paid for their services; the members should have a high sense of responsibility and should devote both time and energy to their work. The fact should be recognized that an advisory board is of a different character. This is not to say that a member of an advisory board need feel no sense of responsibility or obligation. But the member of an advisory board would be conscious of much greater freedom, in the sense that he could feel free to make suggestions, urge the adoption of different policies, talk freely, or do nothing at all, without having to feel that his action or inaction would be fraught with grave consequences to the state. A sense of responsibility, always a restraining influence, is thus a wholesome factor operating upon those who have real power. An advisory board meeting is an occasion for the unrestrained expression of grievances and indignation on the one hand, and visionary aspirations on the other. The members of an advisory board composed of representative dairymen, or of poultry raisers, could sit periodically with the chief of the bureau involved, air their grievances, express their opinions about

the work of the bureau, and offer an abundance of good advice. And doing that should be their sole function. It would afford a splendid opportunity for them to explain to those in authority what they would like to have the department do, and it would afford a similar opportunity for those in authority to explain their point of view. A more or less formal opportunity simply to be heard is a very important right. The struggle over this right has a very long and interesting history, intimately associated with the development of constitutional democracy. Men have fought and died for the right of petition, the right to be heard. No longer is it necessary to fight for the right of petition. But the same problem appears in the course of the development of huge bureaucracies. The aggressive administrator, the over-confident bureaucrat, is impatient of complaints and protests; consequently bureaucracy breeds resistance and bad feeling. Well-designed administrative machinery ought to provide channels through which public opinion can find orderly and reasonably effective expression. Advisory boards open up such channels.

Thus an advisory board might profitably form a part of every bureau in the department of agriculture, except those bureaus concerned with purely routine functions. The members of the board would serve without pay. They could be appointed by the secretary of agriculture for relatively short terms. On the whole, rapid turnover in the membership of these boards would be desirable. Ordinarily only people vitally interested in the work of the bureau would be appointed. Sometimes, no doubt, meetings of these boards would seem to serve no useful purpose whatever. It would be a mistake, however, to reach this conclusion too quickly, for the mere fact that a meeting of the advisory board was called would serve a useful purpose. Generally speaking, if meetings were not particularly well attended, or were short and more or less perfunctory, it would not indicate that anything was wrong. Indeed, it might indicate the opposite.

Advisory boards might thus well serve as excellent indicators of public temper. The wise bureau chief and departmental administrator would be very attentive toward these boards. He would learn much from them, and he could use them to excellent advantage as agencies through which to interpret his own work to the public. As said before, these are possibilities of particular advantage to those whose work lies in the field of agriculture, and that is why they have been discussed at this point. Advisory boards are also particularly useful in departments of public welfare, and in conservation.

## THE STATE FAIR

A discussion of state administrative activities relating to agriculture may properly include some mention of the state fair. Among rural Americans this is an old and much prized institution. Agricultural exhibits of every variety are exhibited, and a long list of private organizations engaged in enterprises that are in some way related to agriculture participate in the promotion and financing. The state government usually provides the administrative overhead and subsidizes the institution to a greater or less degree. It might be thought that responsibility for management could properly be centered in the department of agriculture, yet, the following statement, quoted from a report made by very competent students of administration, may be accepted as conclusively to the contrary: "From the administrative point of view, however, a state fair is a business enterprise. But it is more than that: It is educational, promotive, developmental, and recreational. In performing its functions, it must depend on co-operations from various quarters, official and private. It simply does not fit into any existing state agency; and it should not be included in any administrative consolidation."<sup>4</sup>

## CONCLUSION

No attempt has been made in this chapter to give a complete account of all the things that might be done by a state department of agriculture. Indeed, no complete account could be given, so rapid is the expansion of government in this field. Furthermore, the requirements of the different states vary enormously in character and degree. No two states have precisely the same problems.

A casual survey of the activities of various state departments of agriculture reveals not only many examples of bad integration, but also discloses the widely differing needs of the several states. No one administrative setup for a department of agriculture could possibly be appropriate for all the states. All need administrative agencies to enforce the law, to construct highways, to manage institutions of higher learning, and to deal with public health. Florida may need a bureau for regulating shellfish production, but such an agency would hardly be necessary in North Dakota. Some states may require agencies to regulate the cranberry industry, though Iowa would hardly be conscious of such want. Other services peculiar to certain states are

<sup>4</sup> Institute for Government Research of the Brookings Institution, *Report on a Survey of Administration in Iowa*, p. 347.

cattle branding regulation, cotton grading, and the inspection of cotton gins.

Certain state departments of agriculture deal with the administration of the dog licensing law, with rodent control, immigration, the compilation of the state census, hotel inspection, supervision of furniture upholsterers, and the administration of the cigarette license law. Most of these are clearly examples of bad integration. Other singular services, among them the regulation of roadside markets, indicate relatively new fields into which departments of agriculture may be expected to move as the needs appear.

The main purpose here has not been to enumerate and describe functions, but rather to outline structure and suggest principles of organization applicable to the administrative demands of any state, whether its activities in the field of agriculture were many and various or few and simple. It is easy to multiply bureaus and divisions so as to meet the needs of given situations. The main idea here has been to advocate the consolidation of all activities relating to agriculture into a department so organized that it can readily expand without violating sound principles of administration. Only under these circumstances will it be possible for the modern state to keep abreast of the times and do those things that enlightened public opinion is sure to demand. Not the least of these will be to hold itself ready to co-operate effectively with the federal government in its efforts to cope with the agricultural problem in all its implications.

## CHAPTER XIV

### CONSERVATION

THE need for conserving the bountiful natural resources of this great country seems at last to have dawned upon the American people in such a way as to promise notable achievements in the immediate future. Perhaps Theodore Roosevelt may be credited with having made the people conscious of their rich heritage to a degree that they had never been before.<sup>1</sup> But it has required nearly a generation of time since his day to bring it to pass that the federal and state governments should be aroused to the point of doing, on a truly large scale, the splendid things that only government can do by way of conservation. The federal government has made tremendous strides, and despite the exigencies of party politics there can be no doubt that enlightened public opinion will demand an ever-increasing activity in this direction.

But the federal government cannot by any means be expected to carry the whole burden of conservation. Constitutional limitations would make that impossible even if it were desirable. The states all have their own peculiar problems of conservation, and wholly adequate power to deal with them if they only choose to do so. Of course they have all been doing at least a little something for many years past. And it does not surprise the student of administration to discover that activities in this field have also developed in the haphazard fashion remarked in other areas of administration.

Thus, for a long time states having great forest areas have done something to conserve their timber resources. State foresters have been provided for, and fire fighting units have been maintained. A large

<sup>1</sup> "America has been a continent where land was abundant and labor and capital scarce; hence there had been no room in the American language for the word *conservation*. By 1900 land ceased to be a free good. Forests, once liabilities and impediments to progress, moved slowly into the asset column as the supply waned. Even oil and coal did not look so inexhaustible as was once assumed. The man-land ratio, to quote Zimmerman, was maturing.

" . . . He [Theodore Roosevelt] loved the continent, was a true sportsman and was shrewd enough to read the warning. . . . With his coworker, Gifford Pinchot, head of the Forest Service, he put the word *conservation* into the American dictionary." Stuart Chase, *Rich Land, Poor Land* (New York: McGraw-Hill Book Company, Inc., 1936), p. 298.

proportion of the states have had either fish and game departments or isolated and independent game wardens to serve as special policemen in the enforcement of fish and game laws. State geologists have been provided for, and have often pursued their studies and investigations quite independently of any other administrative services. Departments of agriculture have been charged by state legislatures with responsibility for carrying on various types of conservation work. Park boards or commissions have appeared with great rapidity in recent years, and have been concerned with preserving and developing beauty spots set apart by the legislature as public recreation areas. Bureaus of mines as well as water-power commissions have been set up to carry on their special services quite independently.

All this has been for the best, but it has meant bad integration. Each service may have been carried on in a reasonably efficient manner, but that is not to gainsay that services which could co-operate to mutual advantage have been found working at cross purposes. The full possibilities of a well-rounded program of conservation have not been fulfilled because of petty jealousies, political pressures, rivalries on the part of independent offices, and the difficulty of legislating to advantage when many different agencies are to be responsible for administering what ought to be a unified program.

Thus there is need for bringing together into one well-organized department those activities which are concerned with one or another of the aspects of conservation. Independent game wardens, park boards, power commissions, foresters, state geologists, and all other separate agencies could find suitable places in one well-integrated department, where, under unified direction, they could work together toward a common end. By this means, not only would efficiency and economy be promoted, but the way would be opened to the greater possibilities that lie in the future. A good administrative setup always makes easier the launching of new and better projects.

#### BOARD OF CONSERVATION

A board should be in charge of this department, though it is quite possible that excellent work could be done through a department headed by a single commissioner. Many state departments of conservation are individually headed. But the reason why there should be a board in charge is that set forth in these pages on several other occasions. Burdened with a multitude of other problems, it is very difficult for a legislature to legislate wisely, adequately, and in an up-to-date way with respect to such matters as soil conservation, erosion

control, fish hatcheries, tree planting, land zoning, irrigation, park development, duck hunting, and other activities. With respect to all these things and others, there should be flexibility, opportunity for experimentation, and freedom to adjust plans and regulations as needs appear. A legislature is not adapted for solving the problem. A single officer should not be vested with too broad discretion. A board could meet the situation admirably.

Doubtless this board need not be so large as some others. A board of seven, appointed for overlapping terms by the governor, with the consent of the senate, could be in charge, and could appoint a chief administrator known as the commissioner of conservation. In various states, boards of conservation, park boards, and other such agencies have frequently served without pay. Often they have done excellent work. Positions on such boards are rarely sought by any except those who have a genuine and ardent interest in the purposes for which the board exists. Politics, in the evil sense of that word, has not crept in, and these public-spirited citizens have generously given their time and energy.

Such persons deserve to be applauded, but nevertheless the idea of having an unpaid board in this administrative area is unsound. This board would have numerous important decisions to make, it should determine policies within limits fixed by legislation, and its members should be conscious of a definite and pressing obligation to give their time and attention to the work in hand. Adequate compensation on the one hand, and a sense of real power and importance on the other, are together calculated to bring out the best energies of men, provided, of course, that they have genuine enthusiasm for the task before them. An adequate *per diem* allowance would help to meet this situation.

#### ORIGIN OF STATE PLANNING BOARDS

The broad scope of the work, and the enormous possibilities for achievement that lie ahead for state departments of conservation, cannot be better envisaged than by turning attention to the accomplishments of the state planning boards set up under the leadership of the National Resources Committee. During the first administration of President Franklin D. Roosevelt, when the federal government undertook to make large grants to states, counties, and municipalities, in order to promote public works and so provide work relief, it at once became apparent that few states were fully prepared to use the money



to best advantage. Need for intelligent planning was at once apparent. Knowledge of what the natural resources really were, and what most needed to be done was very inadequate. The states were therefore urged to create planning boards for the purpose of making necessary surveys and for outlining the most desirable projects to be undertaken. By the close of 1935, practically every state had responded. In some states *ex officio* planning boards were created, composed of certain of the principal state officers and heads of departments. More frequently these planning boards were composed of public-spirited private citizens who gave time and energy without pay and at considerable loss to themselves.

From the point of view of administration, the accomplishments of these state planning boards in two short years were nothing less than amazing. Engineers, economists, accountants, statisticians, political scientists, sociologists, chemists, doctors, and other specialists and experts were mobilized almost overnight to turn their attention to the problems of state planning. An account of what they accomplished can be found in the *Report of the National Resources Board for 1935*, entitled, "State Planning."

Several important factors contributed to their success. They did not have conclusive power to commit their states to any specific programs involving great expenditure; they were merely to advise and suggest. Those who were in charge were obviously not even remotely concerned with promoting selfish ambitions or seeking political advancement. Most important of all, the splendid objectives in view kindled the enthusiasm and fired the imagination of many able men and women. These important factors are rarely present in normal times, and unfortunately they cannot ever be expected to persist for long.

These planning boards studied many problems that have nothing directly to do with conservation proper. Thus, some of them considered the possibilities of county consolidation, reorganization of state administration, public works and highway construction, public health problems, and rural education. But by far the largest and most important part of their work was the outlining of conservation programs. These are the programs which the various state departments of conservation may be expected to follow in years to come, long after the temporary planning boards shall have ceased to exist. It is to be hoped that permanent boards in the various departments of administration will carry on in the direction the planning boards have indicated.

In order to give some notion of what has been done, it will be

useful to quote from the 1935 report referred to above. The first three quotations that follow indicate the character of the planning agencies. They were virtually the same in every state.

Texas: "The 1935 enabling statute gives the Texas Planning Board authority of a purely advisory character, and prohibits administrative action. By very reason of its freedom from administrative interests, its influence with the people and governmental agencies of the State can, with wise exercise of its advisory function, become very effective. The duties imposed embrace consideration of a long-range plan for physical development of the State, and the recommendation of economic and social measures for the welfare of the people; advising the Governor and legislature and ascertaining what Federal funds are allocated for use in the State and of formulating a comprehensive State program for constructive expenditure."<sup>2</sup>

Washington: "Broadly speaking, the law provided for the State planning council to collect information and to make recommendations for the proper use of all natural resources. In particular the council is required to prepare and perfect a State master plan for flood control, State public reservations, sites for public buildings, and for the economical and orderly development of the natural, agricultural, and industrial resources of the State. The following policies were adopted: (1) That, as far as possible, no appeal be made directly to the State for funds for researches and studies under the council; (2) that much of the work be carried out by voluntary assistance; (3) that where necessary work could not be carried out through voluntary service, an appeal be made to existing agencies rather than directly to the State; (4) that the council conduct no propaganda."<sup>3</sup>

Oregon: "The State planning board is a research, advisory, and co-ordinating agency. The State planning board act states that it shall be the duty of the board: To recommend to the Governor comprehensive plans for the utilization, conservation, and development of the natural resources of the State; conduct investigations, surveys, and research, and, from data obtained thereby, recommend to the Governor a balanced program of projects for public improvements; co-operate with the Federal, state, and regional agencies; at the request of the Governor or the legislature, conduct investigations, surveys, and research upon any subject, and submit reports and recommendations on such subjects to the Governor or the legislature."<sup>4</sup>

<sup>2</sup> U. S. National Resources Board, *State Planning* (Washington: Government Printing Office, 1935), p. 89.

<sup>3</sup> *Op. cit.*, p. 97.

<sup>4</sup> *Op. cit.*, p. 77.

## WORK OF STATE PLANNING BOARD

The following quotations indicate the nature of the planning that has been done in connection with conservation.

Montana: "During the first year of its official existence, the board's greatest accomplishment has been the stimulation of popular support for planning, chiefly through its district organization and advisory council.

"Planning studies have enabled the board to determine methods of establishing greater stability for agriculture and industry, of improving the condition of families in distress.

"Various state agencies already have adopted reasonably definite policies and plans with respect to water conservation, rural rehabilitation, restoration of submarginal lands for range use, designation of submarginal areas for recreational development, and assistance to smaller mining enterprises; rural electrification, public works, highways, feeder roads, and grade crossing elimination. This material is being co-ordinated and surveys and studies are to determine state policies for: Taxation, public-school education, zoning of submarginal areas, social welfare, and industrial development.

"The planning of programs, endorsed by public opinion, has been accompanied by surveys of specific projects or activities to make the programs effective. Since state planning in Montana has been centralized under a dual agency, the Montana Water Conservation and Planning Board, it is provided with an operating agency for the execution of its programs."<sup>5</sup>

Missouri: ". . . The topographic mapping work of the Geological Survey is only about 38 per cent completed, and the Soil Survey is only about 50 per cent completed. There is an extraordinary deficiency in facts and information relating to public health and social conditions in the state.

"The Missouri State Planning Board has encouraged the creation of county planning agencies, even though there are almost no funds at present for the financing of local work. Fifteen county planning boards have been appointed in Missouri in the last three months, and more will be created soon. Some of these boards are already at work collecting information through voluntary services, thus forming the background for county and State plans and programs. . . .

"Since the approval of the State planning board is required upon all submarginal land retirement projects, considerable time and attention have been given to proposed parks and forest projects. Eight

<sup>5</sup> *Op. cit.*, p. 55.

large national forest projects have been approved and property acquisition is proceeding in all of them. To date six park projects, one soil-erosion project, and one reservoir project have been approved and are in various stages of operation. Of special significance is the proposed Ozark Parkway, which will connect with several state parks and national forests, affording recreational opportunity for tourists and for a large percentage of the state's population. This project has received preliminary approval, and a field reconnaissance is now in progress."<sup>6</sup>

Nebraska: "Under the direction of Arthur Anderson, land planning consultant, two reports of the land use planning studies have been made. A tentative classification of the major land-use problems follows: (1) Water erosion of the silty soils of the glacial drift loess hill areas; (2) wind erosion of the sandy soils; (3) shallow soil areas of low productivity and erosive qualities; (4) heavy clayey soils presenting water, tilth, and erosion problems; (5) mixed soil areas; (6) irrigation problems of irrigated districts; and (7) conservation and development of timber and park resources of the Pine Ridge area.

"Proposed adjustments in land use to be considered are: (1) Extension of orchard crops, particularly apple production in the loess hill area of southeast Nebraska; (2) production of vegetable canning crops on selected lowland and terrace soils of the Platte and Missouri Valleys and similar areas; (3) expansion of poultry enterprises in the more productive section of eastern Nebraska favorably situated with respect to market and transportation facilities; (4) development of potential irrigation projects and expansion of pump irrigation in the Platte Valley and similar areas.

"The nature and extent of these adjustments can be determined only from future planning board studies of all the resources of the state."<sup>7</sup>

Utah: "A number of studies have been undertaken by the state planning board, one of which dealt with population increase and shifts, another with recreational possibilities.

"Studies in land utilization show that three-fifths of the State is still government-owned, and only one-fifth actually belongs to private citizens. This condition makes such problems as highway building, provision for natural recreation, flood protection, grazing, and erosion control, etc., definitely national problems.

"Studies of water resources show the need for more storage facilities and more careful economic planning for irrigation districts. Over-

<sup>6</sup> *Op. cit.*, p. 53.

<sup>7</sup> *Op. cit.*, p. 57.

enthusiasm has caused many promotions to go beyond the physical possibilities of the available land and water. The state is one of four upper-basin states of the Colorado River.

"... Studies of the planning board show that Utah holds an important place in national food production because of the unusual quality of produce characteristic of high altitudes.

"Surveys show that Utah also is important in metal production. . . .

"Some of the accomplishments of the planning board during the past year are: (a) Study of the diking of part of Great Salt Lake, which includes studies of water supply, power, engineering design and feasibility, sewage disposal, etc. (b) Recommendation for a statutory department of public welfare. (c) Recommendation for the removal of the state penitentiary to a more suitable location.

"Other studies were made of the following subjects: land utilization, population, recreation, transportation, water resources, commercial trade, public works, county zoning, and the Salt Lake-Ogden regional plan. Studies now in progress are: land utilization, mineral resources, public works, and underground water." <sup>8</sup>

South Dakota: "The state planning board has given wide publicity to the need of securing a sound factual background for planning, and has itself gained a reputation for impartiality. Because of this attitude it has been able to check certain unsound promotional schemes, and to lend valuable support to worth-while projects.

"It is a significant indication of the reputation of the board that each measure which it sponsored was adopted during the 1935 session of the state legislature. The measures enacted were: a law creating a committee on stream pollution; a law increasing the power of the state to regulate the waste of artesian water; a law creating a state park board to have jurisdiction over park areas and Federal lands to be acquired for park and recreational purposes; a law empowering counties to acquire public parks and bodies of water; and an enabling act for the organization of grazing associations. . . .

"Through its various committees, the state planning board has designated and recommended for public purchase a large number of areas, most of them of a submarginal nature, for parks, upland game refuges, migratory water fowl refuges, and forests. The planning board committees have also actively assisted in the selection of areas for CCC camps for forest work, soil erosion, water conservation, and for other purposes." <sup>9</sup>

<sup>8</sup> *Op. cit.*, p. 91.

<sup>9</sup> *Op. cit.*, p. 85.

South Carolina: "Pursuant to its instructions from Governor Blackwood, the state planning board on December 18, 1933, submitted a report to the governor on the construction needs of the various penal, charitable, and educational institutions of the state. A copy of this report was forwarded to the Public Works Administration for guidance in reviewing projects for South Carolina.

"In 1934 the South Carolina Emergency Relief Administration conducted a thorough agricultural land use survey of the state, obtaining data on acidity of soils, general farm organization, livestock then on farms, topography, erosion, soil types, crop land use, acreage, and management. It is now proposed that the land planning consultant assume supervision of the tabulation of these data, from which land ownership maps could be compiled.

"The future program of work includes, in addition to the above tabulation: (1) A study of farm real estate tax delinquency by school districts; (2) preparation of a state soil map; and (3) preparation of a state population map by expansion of a simple dot map made by the state agricultural experiment station."<sup>10</sup>

Rhode Island: "Reports, map material, and general information pertaining to the state have been secured by the planning board from state departments, Federal agencies, municipalities, utility companies, and other sources.

"A series of uniform scale maps for every town in the state is in preparation. A series of historical maps is also being made.

"At the request of the National Resources Board, the State Planning Board, in co-operation with the State PWA engineer, made a detailed inventory of needed public works in the state.

"The State Planning Board recommends the acquisition, through Federal and state co-operation, of state forests, submarginal lands, and public ocean beaches for development into parks and recreational areas, including a state-wide parkway along the western border of the state.

"At least 10 per cent of the land in the state should be publicly owned.

"The board also recommends the extension of water-supply systems, the development of sewage-disposal plants, systems for rural electrification, the improvement of transportation facilities, and the adoption of measures to improve housing, public health, and public safety.

"The preservation of historic sites and of existing seventeenth and

<sup>10</sup> *Op. cit.*, p. 83.

eighteenth century houses also is being strongly encouraged.”<sup>11</sup>

Ohio: “The governor’s board recognized from the beginning its duty to assist through studies and counsel the various emergency agencies, Federal, state, and local, without, however, neglecting its primary duty of formulating a long-range, basic plan of state development.

“The board devoted the first six months to making an inventory of the resources, facilities, and social and economic conditions in the state.

“It recently completed a series of studies of immediate importance to such administrative agencies. The chief of these are:

1. Recommendations for submarginal land purchase demonstration units, and studies and reports on such projects submitted to the regional director of the AAA land-policy section by various agencies and individuals.

2. Studies of land purchase proposals for recreational and conservational purposes.

3. An investigation and report on minimum-flow requirements, in connection with the proposed Scioto-Sandusky flood-control water-conservation project.

4. A comprehensive study of the state administrative departments in control of recreational and conservational activities, looking toward their organization;

5. An analytical study, in co-operation with the State ERA of the extent and characteristics of the unemployed employables in the state.

6. A state-wide rural electrification survey, in co-operation with the state ERA.

7. The taking, compilation, and review of the National Inventory of Works Projects, in co-operation with the state public works administration engineer.”<sup>12</sup>

Minnesota: “The scope of the reports is indicated by the lists of special committee contributions appearing in parts II and III. These are as follows: Part II: Land use; water resources; forest resources; production and distribution of income; power; transportation; public health; education; welfare institutions; metropolitan; emergency relief administration; taxation and administration units. Part III: Inventory of public works; education above the high-school level; recreation; survey of the possibilities for rural electrification.

“A study of population trends was basic to several of the committee reports, and is summarized in Part I of the report of the board.

<sup>11</sup> *Op. cit.*, p. 81.

<sup>12</sup> *Op. cit.*, p. 73.

"Interpretive suggestions were developed from the available data with respect to a number of matters. It is impossible to summarize all of them here, but reference may be made to a few of the more important: (1) The population trends in Minnesota indicate rapidly approaching stabilization. This has an important bearing on the development of highways, school facilities, and, in fact, all physical planning; (2) Coincident with this realization comes the suggestion that new agricultural land need not, possibly should not, be developed. It seems probable that some lands in the northeast third of the state should be zoned against further agricultural development; (3) Consideration of the data on precipitation, run-off, and natural usage leads to the conclusion that water conservation is the most important field for public works in the state during the next five or ten years.

"The state planning board has acted as an unofficial cabinet for the state's administrative departments with respect to questions of emergency relief and public works. It has co-ordinated the plans of the highway, conservation, and education departments, the board of health, and similar agencies. This activity is illustrated by the consideration of water conservation, stream pollution, and sewage-disposal projects in the Red River Valley."<sup>13</sup>

Vermont: "Population problems have been of especial interest to the board. Two maps have been prepared from data supplied by the State Department of Public Health: (1) A medical map showing the location of all physicians and hospitals in the state, and the main road systems about those towns having no resident doctors; (2) a sanitation map showing the distribution of present water supplies and sewage systems and the location of disposal plants.

"From records of the public service commission, a map of the present electric power developments in the state has been prepared. This shows the horsepower of both steam and hydroelectric plants, together with the transmission and major distribution systems.

"Revenue studies have been made for each town in the state with reference to its population, sums spent for relief, property valuation, tax rate, tax delinquency, total indebtedness, and cash on hand. The state planning board co-operated with the state public works administration in compiling an inventory of public works projects.

"An adequate and sound land-use program is being developed through the appointment of two committees to study land-use and rural-zoning problems, and by a land-use survey in fifteen towns. Through collaboration with the AAA and the Agricultural Extension

<sup>13</sup> *Op. cit.*, p. 49.



Service, plans are being made to permit Federal and state land-planning agencies to co-ordinate their programs.

"When time and available funds permit, the planning board recommends the following projects be undertaken: (1) Preparation of basic data maps; (2) development of an adequate and sound land program; (3) prosecution of studies of water resources, flood control, and stream pollution; (4) review and revision, in co-operation with state PWA engineer, of the projects in the state inventory of public works; (5) preparation of a six-year program of public works; (6) an industrial survey of Vermont with special attention to power development; and (7) a comprehensive study of state recreational resources in co-operation with the state conservation department and private agencies concerned with recreation."<sup>14</sup>

The above quotations clearly indicate the sort of work that a state department of conservation may be expected to do. The board in charge of the department should have power to organize bureaus and divisions for the purpose of carrying on the various activities.

#### BUREAUS IN THE DEPARTMENT

Within the department there might well be a bureau of land resources, in charge of a bureau chief. An important function of this bureau would be to prepare extensive maps and charts of the state, and to conduct surveys with a view to compiling information as to the character and quality of the resources of the entire land area. Agricultural land would be classified. In co-operation with appropriate bureaus of the department of agriculture, plans could be devised with a view to the improvement and more intelligent use of the various kinds of land.

The prevention of soil erosion caused by water or wind would be an important concern of this bureau.<sup>15</sup> Suitable planting of appropriate

<sup>14</sup> *Op. cit.*, p. 93.

<sup>15</sup> "A large portion of the agricultural land in the [Mississippi] Basin has lost from three to six inches of top soil, and no less than 25 percent of the tilled lands have actually been stripped to the subsoil. About five percent has reached the gully stage, and has been permanently ruined for agricultural use. Four hundred million dollars a year is a conservative estimate of the tangible loss to the whole United States. First comes sheet erosion, often imperceptible except for a slight change in the color of the soil and a mysterious loss in fertility. Then "shoe-string" erosion, cracks and wrinkles across the fields. Finally, gully erosion, like the last stages of an incurable disease. During this process the standard of living of those dependent on the land is lowered progressively. There is an increase of farm tenantry, tax delinquency, bankruptcies and land abandonment. The income of the whole community is lessened. There is a failure to maintain public institutions and public improvements, a progressive disinte-

crops and the erection of windbreaks and other devices to prevent wind erosion would be matters of great importance in some states or parts of states. Water erosion is a problem wherever agriculture is carried on, and that means in every state. Experts are now learning how to deal with this problem. Farmers need to be persuaded, or induced, to refrain from plowing too close to streams, so that the otherwise steady wash of topsoil into creeks and rivers may be prevented. They need to be persuaded, or induced, to avoid plowing hillsides that are too steep, and to adopt the plan of plowing curved or semicircular furrows instead of the straight ones that tend to produce streamlets in fields, thus devastatingly eroding the soil. Terracing serves a similar purpose. Obviously representatives of the departments of agriculture and conservation would need to work in close co-operation under certain circumstances. They should find this easy to do, since both would be concerned with service and help rather than with control.

Clearing, rock removal, drainage, irrigation, terracing, and reforestation—types of reclamation work—would be the concern of this bureau. In many states, of course, these activities would be almost negligible; in others they would assume major importance. It has been the practice in some states to permit the organization of little drainage districts within which the people elect officers to carry on the project. This has been done in deference to a demand for local self-government, but the device has long outworn its usefulness. The state department of conservation should have this work in hand.

In many states large areas are still publicly owned. Much of this land is not suitable for development by private owners. Such land should be in charge of this bureau of the department of conservation. Plans could be devised for its best use. Some of it could be leased for

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gration of the population, lowering of the morale of the people, increase of distress, and dependency on State and Federal relief. . . . Once smiling regions become a desolate testimonial to man's folly. . . .

"Seventy-five percent of all tilled land in the United States is losing fertility by erosion. Soil which has taken a thousand years and more to build is now washing into rivers at the rate of 1,500,000,000 tons a year, there to choke channels, reservoirs, irrigation canals with silt. The loss arises from tilling over-steep slopes; from one crop farming, especially of corn, cotton and tobacco which need cultivation between the rows; from lack of adequate terracing; from forest fire injury; from overgrazing by livestock. Here is a 3.7 percent slope on Shelby loam soil studied for six years by the Missouri Agricultural Experiment Station. On bare land, the rate of movement of soil was 34.8 tons per acre per year—down to the sea. In continuous corn, the rate was 17.7 tons; in continuous wheat, 6.6 tons; in a rotation of corn, wheat and clover the rate drops to 2.8 tons; in sod grass, only .3 tons." Stuart Chase, *Government in Business* (New York: 1935), pp. 187, 188. (By permission of The Macmillan Company, publishers.)

limited periods, while other parts could be developed over a long period of time until it became suitable for private owners. Parts of it could be turned over to a bureau charged with developing parks and recreation areas. This public domain would afford splendid opportunities for experimentation with various conservation methods. One division of the bureau would be responsible for the sale of public lands, on terms prescribed by law.

Another bureau in the department of conservation would be concerned with mines and mineral resources. It would include the state geologist, an official whose work is endless. He should know the mineral resources of his state and where they lie. But the work of the bureau would include much more than that, since all mines and oil wells of the state should be under its supervision. Laws have been enacted in many states, and need to be enacted in others, that are designed to compel owners of mineral deposits to develop their properties in ways that will best serve the public interest. The time has long since passed when the rights of property were considered to be so precious that private owners could exploit mineral resources in such a way as to jeopardize the welfare of future generations. Public opinion demands that these resources be conserved, and to this end mine-owners must be prevented from following wasteful and destructive methods.<sup>16</sup> The problem is to devise proper methods of operation and to see that they are enforced. This should be the responsibility of the bureau of mines and mineral resources.

The exploitation of oil and natural gas resources presents many new and baffling problems. There should be some basic legislation concerning the limitation of production and related matters, and it would be the duty of this bureau to enforce such laws.

Mining presents special problems so far as concerns the health and safety of mineworkers. At this point the bureau of mines and mineral

<sup>16</sup> "The insane waste of abandoned mines and workings should be stopped. If individual owners cannot stop it, the community must. Copper, lead and zinc are of vital importance and shortage is indicated, not within the lifetime of our children, but within our own. Waste in refining and utilization must be reduced. The use of scrap is a major method of conservation. Old motorcars should be lifted out of the dumps which now make the countryside hideous, and their metals should be returned to the smelters through the scrap market. For every ton of coal burned there is a ton less to burn, but for every ton of iron, copper, lead or zinc used there can be half a ton or more to use again. Some industries subsist entirely on scrap. Today more scrap is used in copper production than new metal. Poking around the harbors of the world, one finds rusty tramp steamers, flying the Japanese flag, filling their holds with scrap metals which other nations are too lazy or too stupid to save. The United States, facing shortages, goes blithely ahead exporting scrap. 'The subject of scrap is the great blind spot of the world's metal economy.'" Chase, *Rich Land, Poor Land*, pp. 209, 210.

resources would find itself in contact with the department of health and the department of labor. But there should be no conflict of jurisdiction. Primary responsibility should lie with the bureau of mines and mineral resources, since this office would include men who possess full knowledge of mining problems in all their aspects. In some states a considerable staff of mine inspectors would be needed.

A third bureau in the department of conservation might be a bureau of water resources. Lakes, ponds, rivers, creeks, springs, and deep wells need to be conserved. Every state should have some administrative agency concerned with the conservation of water resources. Every state legislature should enact some law directed toward water conservation but much of the legislation would be futile were there not some administrative agency to interpret it and make it effective. Unfortunately, private interests and public interest are often directly at variance with one another in matters concerning the use of natural resources. Present owners, stimulated by a desire to make as much as they can out of the property they own, are under pressure to do things that jeopardize the welfare of future generations. The state, not private owners, must be depended upon to do what needs to be done so as to safeguard the future. A state can do this through a well-organized department of conservation.

It is a lamentable fact that thousands of lakes are going dry, and that few new ones are forming; that thousands of rivers and streams are drying up and are being choked with silt. In some parts of the country the underground water table is dropping at an alarming rate, thus causing springs and wells to go dry.<sup>17</sup> Individual property owners

<sup>17</sup> "The 'ground water table' is the level at which water normally lies beneath the surface. A fall in this table is a serious matter for 95 percent of the population of the valley, which lacks access to the water supply of great cities. In the easterly, more humid parts of the valley, there is no evidence that the table has dropped, but in parts of the western watershed, there is an alarming shrinkage. Answered questionnaires were received from 1,482 well drillers in these regions. The returns indicated that during average periods ranging from ten to forty-four years there has been a ground level drop of more than ten feet in Nebraska, Minnesota, and the Dakotas, and of somewhat less than that average in Kansas and Missouri. In western North Dakota, the table has dropped twenty feet, on the Missouri-Mississippi Divide in Iowa, from twenty to thirty feet. In South Dakota, there has been a drop of at least forty feet in twenty years. The shrinkage is progressive, like compound interest.

"As the table sinks, wells go dry, springs, ponds, lakes, streams shrink or altogether disappear. A declining water table with no decline in rainfall means that water is running down to the sea too fast because of slaughtered forests, wasteful methods of tillage. Improvements in farm machinery have protected neither the land nor the cash position of the farmer. They have created floods in the delta and overproduction in the market. 'The diversified cropping system of the pioneers was easier on the land. . . . We cannot return to pioneer conditions, but we probably should return to diversification, which in turn would mean a better balanced agriculture.'" Chase, *Government in Business*, pp. 191, 192.

can do little to prevent this. Government can do much. Private drainage operations that serve to deplete the lakes can be arrested; dams that will produce artificial lakes and reservoirs can be constructed; rivers can be dredged and straightened and dammed with a view to conserving them. Scientists and engineers know how to do these things, but they are helpless unless the state makes use of their services. Much study and careful investigation requiring time are necessary, and only the state can afford such undertakings. These are the things with which a bureau of water resources must be concerned. Expensive surveys must be made and elaborate plans devised. Of course this planning would far outstrip the state's immediate financial capacity, but nevertheless it should be done so as to make intelligent progress possible whenever funds became available.

Comprehensive legislation enacted with a view to the ultimate fulfillment of the plans of conservationists should make it possible for the board of conservation to embark upon specific programs. Since there should be considerable leeway, a board needs to be in charge. Some things need to be done at once, other projects, though excellent, must wait. Guided by the experts under their control, members of a board of conservation would be thinking about these problems year in and year out. Thus, as the years rolled by, a well-rounded coherent program could be developed and effective conservation achieved.

A division of engineering in the bureau of water resources could have direct charge of the activities thus far discussed. A division of power resources could be in charge of power generating plants made possible by the construction of dams and artificial reservoirs. By far the largest proportion of the great power sites would, of course, come under the control of the federal government, since it has full control of all navigable streams. Nevertheless, since there are many opportunities for power development on smaller streams, the state should be in a position to deal with this problem much as the federal government does, by leasing sites to private corporations under terms that definitely protect the public interest.

A division of navigation would certainly be needed in several states. Boat inspectors, to be found in many states, should be in this division. In so far as the state legislature saw fit to provide for supervision of navigation on the waters of the state not under the control of the federal government, this division should assume responsibility.

Because lake and stream pollution is a matter of importance to the state, a division in the bureau would be concerned with this. To some extent water pollution is a problem that falls within the domain of the department of health even though it primarily concerns itself

with health problems only. There can be much pollution, however, in a sense that does not truly menace public health. Industrial concerns may pour refuse into lakes and streams and thus render them unfit for boating and public bathing. Plant and fish life may be destroyed by pollution that does not menace human health. A division of water pollution in the bureau of water resources would constantly be on the alert to uncover these practices and to suppress them.

A forestry bureau would be concerned with the conservation of timber resources. In many states it is already too late to save the mighty forests that were exploited for private gain by the timber barons of a past generation,<sup>18</sup> but nevertheless much can still be done even where this has occurred. State government-owned forest lands would be under the direct charge of this bureau. It would be concerned with preserving the timber, suppressing fires, experimenting in co-operation with federal officers and with private owners hoping to devise more effective methods of minimizing fires and preventing them. It would be concerned with cutting and withdrawing timber in accordance with sound principles of forestry, and with protecting trees against animal pests and human vandals. Doing even this would be a large undertaking in many states.

But a forestry bureau should devote its energies to the cultivation of new forest areas also, to the problem of how best to deal with cutover or burned areas. Suitable planting at this time means benefits for future generations. It is the sort of thing that private owners cannot be expected to do on a large scale. In accordance with suitable legislation, the bureau could acquire possession of tracts of burned or cutover forest land now owned by private individuals but of little value to them. These lands could be utilized not only for growing new timber, but also in the interests of the larger aspects of conservation, the conservation of soil and water.

There are other ways in which the bureau would contact private owners. The state may make concessions by way of tax exemption, or the giving of material aid to owners of forest land and potential forest areas if the owners will co-operate with the state in conservation programs. This bureau could have the responsibility for administering such enlightened legislation.

<sup>18</sup> "Enormous forests have been plundered and ruined. There were 800 million acres of virgin forest when the Pilgrims landed. Today there are only 138 million acres. Ruthless exploitation means the ruin of the land for second growth because no trees are left for seed. It means that land is left bare so that soil is washed away. It means tremendous destruction by forest fire." R. A. Goslin and O. P. Goslin, *Rich Man, Poor Man* (New York: Harper and Brothers, 1935), p. 72.

Obviously, in some states the conservation of forests would be a relatively unimportant matter, in others it would be a huge undertaking. It could always be done best in co-operation with the federal government, and in every state there would be at least something to do.

The necessity for conserving fish and game has been so clearly recognized that many states have separate departments of administration concerned wholly with this problem. One reason for this is that hunters and fishermen have actively pressed state legislatures to do something about the matter. Though in one sense selfish, their activities have for the most part been in the interest of the public good. It would seem to be desirable in the interests of good integration, however, to bring the agencies that administer fish and game laws into the department of conservation.

Many fish and game departments have been merely special police agencies concerned with enforcing fish and game laws. This needs to be done, of course, but in addition such a department has much more to do. Game preserves can be set apart and developed. Fish hatcheries have been established in many states, and there should be more of them. Studies can be made of wild life, and private owners of woodland and streams can be induced to co-operate in the propagation and preservation of birds, waterfowl, and fish.

This work needs to be adequately financed and carried on by men who understand what they are doing. Hundreds of thousands of dollars have been wasted by stocking lakes and streams with fish that soon died because their food supply was not adequately protected. Fish and game departments manned by political appointees and people who have not been adequately trained have made some very costly blunders. Shocking numbers of wild fowl and other birds die every year through lack of proper coverage and food. This could often be avoided by relatively small expenditures of money.

This bureau would be much concerned with the activities of other bureaus in the department of conservation, notably those which had to do with forest lands and the conservation of water resources. This is a reason why all these agencies should be in one department, under the ultimate control of a board that presumably would be equally interested in all their activities. They should not work independently, since doing so might put them at cross purposes, and develop inter-departmental jealousies and competition. The common central board could adopt policies that would make for co-operation and well-rounded progress, and it should have power to apportion the depart-

mental budget in such manner that all activities could be carried on without undue discrimination in favor of one bureau, or to the detriment of another.

Fish and game laws, under which people can be fined and imprisoned, ought of course to be written by the legislature. Many of the detailed regulations could properly be left to the board of conservation. In drafting such laws there should be intimate co-operation with the federal government and with neighboring states. State departments should be in position to effect this co-operation. Indeed they have done so to a large extent.<sup>19</sup>

A comparatively new field that the states have lately entered is that of developing state parks and recreation areas. As might have been expected, separate agencies of administration have frequently been set up to do this work. Though many of them have done remarkably well, it would seem desirable that responsibility for this service should be vested in the department of conservation. A park bureau within the department could be organized for the purpose.

In every state there are at least some areas that have great scenic value but are of little use for industrial or agricultural purposes. Fortunately it often happens that beauty spots are in a material sense well-nigh valueless. Many of them are already state owned. Other such areas can often be acquired for little money, and it occasionally happens that public-spirited private owners are disposed to donate beautiful tracts to the state if the state guarantees to develop them properly. This is what a park bureau should be prepared to do. At least such areas can be properly conserved, even if development of their full potentialities has to wait for many years. Many states now maintain magnificent parks and forest preserves that will be a source of pleasure to the public for generations to come. Other states are neglecting their opportunities because the legislatures have been unwilling to appropriate the small sums necessary, or because there has been no adequate administrative agency ready to take over the responsibilities involved.

The sums that might be spent in developing state park systems would be prodigious. This would be particularly true if the state set out to purchase valuable property for the purpose. But this is not necessary. Very modest beginnings would lay the foundations for enormous projects to be undertaken in the future. States could acquire lake shore property. Many miles along the banks of streams should

<sup>19</sup> See Graves, *Uniform State Action*, chap. ix, "Cooperation in Conservation Administration."



be owned by the state and could be acquired gradually. A park bureau should be constantly alert to this possibility.

State parks can be developed into delightful recreation areas. Much progress in this direction has been made during the last ten years, and there is every reason to believe that the public will demand continuation of the work. The management and development of these parks would be the responsibility of the park bureau. In populous states like New York, where great progress has been made, the management of vast parks is a large and complicated problem. It may well become so in every state, and the administrative setup should be such that it can be handled properly whenever it does.

A division of the park bureau might well be concerned with licensing and supervising tourist camps and parks. These have sprung up all over the country. While a great many of them are a credit to their private owners, others are little less than a menace to civilization—to morals, to health, and to safety. It is high time state government should at least take them under observation in order to see that basic standards of decent living are observed.<sup>20</sup>

The acquisition of historic sites and points of interest is another matter deserving attention. Though private organizations, whose efforts should be applauded, have done much along this line, much remains for the state to do.

#### ADVISORY BOARDS

It is obvious that excellent use could be made of advisory boards in a department of conservation. The character and function of these boards have been sufficiently discussed in earlier chapters. Sportsmen, interested in hunting and fishing, people interested in developing beauty spots and recreation centers, and others who are deeply moved in the interest of conservation in all its aspects, would be eager to serve on advisory boards in order to help the various bureaus with their advice and suggestions. Here lies potential energy, knowledge, and ability that is invaluable. It should be utilized in every state. To bring these people into intimate contact with administration would be to stimulate and vitalize the public agencies that have the burden and responsibility for doing things the state wants done, and it would

<sup>20</sup> "Still another agency of recent importance is the roadside stand. It has been estimated that there are between 110,000 and 125,000 of these throughout the United States, of which 65,000 or 70,000 are open the entire year." M. M. Willey and S. A. Rice, *Communication Agencies and Social Life* (New York: McGraw-Hill Book Company, Inc., 1933), p. 68.

also establish wholesome and useful contacts with the public generally.

The conservation of natural resources is one of the most inspiring objectives facing the American people today. Virtually everyone is in favor of it. Few people are so dull or so lacking in imagination that their enthusiasm cannot be kindled when visions of the future possibilities of conservation are opened up to them. It is incumbent upon every state to be prepared to fulfill, so far as possible, the aspirations of those who are prepared to lead the way.

## CHAPTER XV

### HIGHWAYS AND PUBLIC WORKS

THE task of building and maintaining highways has developed with phenomenal rapidity in the last quarter of a century. From being a function of little or no importance, so far as the state was concerned, it has everywhere assumed major proportions. Huge sums of money are today spent by the state on highways, and large and elaborate administrative agencies have had to be built up in order to handle the work.

Until the advent of the automobile, responsibility for highways was almost wholly a local concern. In every state, county authorities had considerable power over highway construction and maintenance; smaller areas, townships for the most part, had the rest. In many states where there were no townships, road districts, comparable in size and character to townships, were created for the purpose. At that time highway work was largely a matter of maintenance. Only occasionally was it necessary to mark out and build a new highway of any considerable length. The highway system developed gradually, and the formidable problems of engineering rarely encountered could often be circumvented. Roads went over hills instead of through them. Difficult rocky obstacles were skirted instead of being subdued. Swampy areas were avoided instead of being drained. Rude bridges were placed where they could most easily be built, but with no view to facilitating traffic. Roads curved and wound about in order to avoid the necessity of dealing with property owners whose lands they would cross if they were to be straight. It was not thought necessary to keep many highways open during all seasons of the year. Where gravel was readily available, it was dumped onto the roadbed and there served a useful purpose. Elsewhere travellers wallowed in the mud when the weather was wet, and assumed this nuisance to be one of the necessary incidents of travel in bad weather.

This was the situation until well into the present century. Maintenance of roads and bridges seemed to be a function well adapted to local government. Road work was thought to be a task most anyone could perform if he had a modicum of common sense, and a team of horses at his command. Farmers could do road work in their idle

time. Jail prisoners and vagrants picked up by the police could be assigned to building roads. Indeed, many states had poll taxes based upon the assumption that every male citizen could be expected to put in a day or two upon the highways each year. Locally elected township trustees, road district supervisors, and county commissioners were charged with responsibility for what little planning and direction might be necessary. State legislatures authorized local authorities to apply tax rates in order to raise the necessary funds; assessments were levied against abutting property wherever improvements were put through. Local officers themselves undertook whatever supervision might be needed.

Most significant of all was the fact that each locality was largely free to do what it pleased with its own roads. They were developed and improved, or allowed to lie unrepaired, as the people of the local area might choose. Here was a good example of the American notion of local self-government—small localities doing what they pleased, taxing themselves to do what they might want to do, electing their own officers to do it, and having it done as they pleased, without interference from superior authority.

Despite the sweeping and drastic changes that have been wrought within a few short years, the situation has not changed materially as respects a large proportion of the highway mileage. The change has come about as a result of the larger areas reaching down and taking from the smaller jurisdictions their exclusive power over the more important highways. Thus counties have taken over full responsibility for certain portions of the highway system that were formerly in the hands of district and township officers; states have reached down and taken the most important highways from the counties.<sup>1</sup> And now even the federal government is reaching down and taking from the states a considerable measure of control over the principal

<sup>1</sup> "The process by which control over road building passed gradually from local units to the states is significant . . . the original state expenditures for highways were administered on the grants-in-aid basis; the roads still remained under the control of the local units, although the state authorities exercised some supervisory control over those highways for which state money was used in construction or maintenance. When it became evident that this method was inadequate, the states began to take over certain highways connecting important centers of population and county seats. These were designated as state highways. Acts of this character were adopted in many states around 1910. From that date on, the records show additions to the several state highway systems, made at each successive legislative session as the financial inadequacy of the individual units and their failure to attract capable highway administrators became more and more apparent. In North Carolina, all highways have been state highways since 1931, and many other states are moving rapidly in the same direction." William Brooke Graves, *American State Government* (Boston: D. C. Heath & Company, 1936), p. 739.

transcontinental highways. The drift, still in that direction, may be expected to go much farther.<sup>2</sup> In some states the movement has been very rapid. Small districts and townships are being left with no power at all over highways. In a few states even counties have been deprived of authoritative control over any portion of the highway system, and full state centralization has thus been achieved.<sup>3</sup> Many students of the problem believe this to be a highly desirable thing and expect it eventually to be accomplished in every state.

State centralization in this field is something that can be accomplished piecemeal, as it cannot be in some other fields of administration. In the great fields of public welfare or public education, for example, it is not easy to take partial steps in the direction of centralization. In the case of highways, however, it is possible to mark out 15 per cent of the entire mileage and to transfer power over these highways from the township to the county, without impairing the power of the township authorities over the remaining 85 per cent. In turn it is possible to mark off a percentage of the highway mileage belonging in the county jurisdiction, and to transfer those highways to the state, without impairing the jurisdiction of local authorities over what remains to them. Since this is quite feasible, it has been done to a large extent. Thus the state itself, the county, and the township, may each have an area of exclusive jurisdiction and carry on its work without interfering with either of the others. Indeed, so successful has this sort of distribution of power proved to be, that the practice may eventually serve to impede progress toward full state centralization.

Another compromise with the implications of full state centralization is available. The power transferred to the larger area, county or state, may be only of a negative or advisory character. County or state authorities may be empowered to advise with respect to highway improvement projects and to veto projects that do not measure up to standards set by the higher authority. This would not involve a right to interfere with ordinary routine maintenance work, but it would involve a right to forbid expensive surfacing or paving proj-

<sup>2</sup> "There may some day be a reaction to this present trend in government [centralization of authority], but those who are conversant with the events of the past 30 years in the field of highway administration know that there has been marked improvement in highway management accompanying the establishment of the state highway departments and the federal Bureau of Public Roads. This, despite the fact that certain objectionable practices have grown up along the rapid centralization of highway authority." T. R. Agg and J. E. Brindley, *Highway Administration and Finance* (New York: McGraw-Hill Book Company, Inc., 1927), p. 51.

<sup>3</sup> This full measure of centralization was accomplished in North Carolina in 1931, and in Virginia in 1932.

ects or the construction of bridges. This sort of negative power has been used to very good advantage, but it may be looked upon as merely a halfway step to full power.

Obviously, both these compromise devices may be used at the same time. The state may have exclusive jurisdiction over 7 per cent of the highway mileage, for example, and at the same time have power to supervise work on remaining highways and veto improvement projects that are to cost more than a fixed sum. Steps in the direction of centralization have not been taken without encountering political resistance and perhaps some misgivings on the part of certain students of administration who deplore too great concentration of power.

Highway construction and maintenance has always more or less figured in petty spoils politics. Influential people and those who possess political power like to be able to have improvements made on highways where benefits will accrue to property owned by them. Local politicians are always tempted to improve roads and to spend money on maintenance where it will redound to their own political advantage. If it is in their power to map out a highway program, they are in position to grant or withhold favors for political reasons. Alleged abuses of this sort are a common subject of complaint. Indeed, men seek office on local township or county boards for the avowed purpose of getting highway benefits for their own communities and political supporters. Local politicians, seeming to delight in this sort of petty spoils politics, can be counted upon to stand solidly against a movement toward centralization that would tend to put an end to it, at least so far as they are concerned. It must be admitted that similar practices can be carried on upon a larger scale, even on the state level.

Another reason why local politicians oppose centralization is that it deprives them of patronage. It is only natural that members of local boards should like to be able to employ people to do road work, to purchase road materials, to buy machinery, and to negotiate contracts with construction companies. In the old days, the patronage was of a petty sort, but it is not so now. Today, when supplies of gravel, crushed stone, oil, and other materials are purchased by the carload, when lucrative contracts for large engineering projects must be let, when great structural iron and concrete bridges must be built, local officials are loathe to see such patronage slipping from their hands. Their reasons are not altogether venal. It is not that they want to practice graft and corruption; rather, it is merely that they see opportunities for the enhancement of their own prestige and impor-

tance slipping away. This reaction, not wholly unadmirable, is to be expected.

Nevertheless it is largely because highway administration has come to involve these expensive engineering projects and big contracts that a measure of centralization has come to be desirable.<sup>4</sup> When road work could be done with ordinary farm machinery, a drag and a scraper and a team of horses, there was less reason to object to leaving the responsibility in the hands of locally elected officers. But when it came to the larger, more ambitious enterprises, local authorities often proved to be altogether incompetent. They bought unwisely, they obtained inferior materials, and they paid high prices. They were shamelessly imposed upon by machinery and equipment salesmen. They bought machinery that was ill adapted to their needs. They let contracts for bridges that were either unnecessarily large or too small for the places where they were erected. Their most grievous blunders were often due to a desire to economize. Expensive surfacing material was put on roadbeds not adequately prepared to receive it, with the result that more good material would have to be spread where the first had either washed away or sunk into the mire. Expensive bridges that soon washed out were often installed. Maintenance became a huge burden because adequate drainage and filling had not been planned by competent engineers. All these evils quickly became apparent when local authorities undertook to respond to the tremendous pressure for better highways. These abuses still exist to a considerable degree, and no one will ever know how much public money is wasted on highways through incompetent administration.

The situation has been somewhat remedied in those states that have not gone far toward real centralization but have required local authorities to employ competent engineers to plan and supervise highway work. Though a number of states have done this, it is no certain remedy for the abuses pointed out above, since local authorities may thwart their own engineer and treat him as a hired man rather than as a technical expert. The arrangement represents one of the familiar compromise devices that have forwarded the drift toward centralization. The county is required to hire an engineer, but

<sup>4</sup> "The present trend in the administration of highway affairs has been due largely to the inability of the smaller units of government to cope with the technical problems that arise in the construction of highways that are suitable for present-day highway traffic. A strictly modern highway bridge, or a really high-grade pavement, that has been constructed entirely under either county or township supervision is rarely encountered, although a few outstanding exceptions to the rule could be mentioned." *Op. cit.*, p. 52.

the county authorities have full control over him. Under such a setup, it is of course possible for the county governing board to continue all the bad policies recited above, and also fail to appreciate the skilled services which the engineer might render.

Regardless of what administrative power may still be left with local authorities in the various states, however, at least some degree of state centralization has come into every one of them. Every state now has some state administrative agency, often called a highway commission, responsible for the administration of federal funds bestowed upon the state for highway purposes. The tendency is for these state agencies to acquire more authority as the years go on, rather than to lose any of the power bestowed upon them.

#### ORGANIZATION OF THE STATE DEPARTMENT

There seems to be considerable difference of opinion, even among those who are in the best position to exercise good judgment, as to whether the state highway department should be headed by a plural body—a board or a commission—or by a single commissioner. Both systems have worked well in one state or another, but, on the other hand, serious difficulties have developed under both systems. Perhaps the danger of serious trouble is minimized where a single commissioner is in charge.<sup>5</sup> Appointed by the governor, usually subject to senatorial approval, he is likely to be an able man. Since his position is an important one, most governors would apparently have every wish to appoint a competent person. The qualifications he should possess are so clear that it is possible to judge confidently as to the fitness of the person selected. This is not so with respect to numerous other high administrative posts. For instance, it is not possible to

<sup>5</sup> Even so: "A certain type of individual not infrequently encountered in political life, when appointed to the position of state highway commissioner, seems to be coincidentally endowed with a knowledge of road construction infinitely more profound than that so painstakingly acquired by generations of actual highway builders.

"That type of highway commissioner is an expensive luxury for any state, but there have been all-too-frequent occurrences of such appointments." *Op. cit.*, p. 58.

Another objection to the single commissioner plan is voiced by the same authority: "It has been noted that in some states the directing authority in a highway department is vested in a board made up of several appointive members and in other states is delegated to a single appointive official. If the latter method is followed and the tenure of office of the head of the department coincides with that of the governor who makes the appointment, frequent changes of policy will surely result, unless the engineering staff is continuing and has some real authority over general policies. When both the directing authority and the engineering staff have a tenure of office coincident with that of the governor, no stable policy and no real progress may be expected." *Op. cit.*, p. 62.



measure objectively the qualifications of a person to head a department of agriculture, or a department of conservation, or a department of labor. Let one consider for a moment just what qualifications a person should have in order to fill these positions, and it will be seen how vague and indefinite they are and how hard to measure. It is even difficult to measure the qualifications of people who might be considered eligible to serve as heads of departments of health, or of public welfare, or of education. Many a capable physician would not be a competent commissioner of public health. Many successful teachers would not be good superintendents of public instruction. But a good highway commissioner should be first and foremost a high-class engineer. And the chances are that any high-class engineer who really wanted the position would serve fairly well as a highway commissioner. This is true because nearly all his duties would be of a technical nature, squarely in his field of professional achievement. Thus appointments in this field are more likely to be good than in others, and the incumbent is more apt to find himself at home in his work. He approaches his duties as a technical expert and seeks to perform them in a way that will enhance his professional prestige. This, all very well, argues for placing the highway department in the hands of a single commissioner.

On the other hand there are serious dangers in setting up a plural body to manage the department. Should all the members be technical experts or competent engineers? Should the board or commission be composed of some laymen and some technicians? Should it be composed of other state officials who hold their positions on this board *ex officio*? Should it be composed predominantly of laymen who may be concerned chiefly with seeking benefits for their own communities? What power should it have? Should it be an advisory board, or should it have authoritative control over the policies and work of the department? All these devices have been tried, and each of them has developed the weaknesses that were to be expected.

Certainly the *ex officio* board in charge of highway administration is least desirable of all. Wherever it is found, highway matters will be in charge of men who are popularly elected, whose principal responsibilities lie in wholly remote fields, and who will be tempted either to neglect their duties as members of a highway board or to approach them with a view to promoting political advantage.

A board composed of laymen, usually appointed so as to give adequate representation to the various parts of the state, is likely to be unsatisfactory for two important reasons. In the first place, laymen cannot be expected to pass judgment wisely upon the multitude of

technical problems that constantly arise in connection with highway work. The engineers who do the work can have neither respect for the board in control nor confidence in it. In the second place, lay board members, who think of themselves as representing various sections of the state, cannot expect to escape the pressure that leads to bringing politics of a most vicious sort into highway administration.

Opportunities to exploit a position on a state highway board or commission are indeed great. Favoritism, logrolling and trading, in the matter of deciding which highways to improve and which to neglect, may easily reach the proportions of a public scandal. The opportunities to practice corruption in the matter of purchases and contracts are so great and obvious as to need no further comment.

Because of apparent weaknesses in the *ex officio* boards and other types of lay boards, it has eventuated that most highway commissions which enjoy real power are now composed either wholly or for the most part of engineers. This arrangement has worked very well, though many students of the problem prefer the single commissioner.

At its best, however, the single-commissioner plan is not so desirable as the plural agency scheme at its best.<sup>6</sup> The single-commissioner arrangement assumes either that the legislature itself will determine all matters of program and policy, or that a measure of discretion that no one officer ought to have will be vested in a single official. Furthermore, the exercise of such discretion with respect to policy would be almost sure to embroil that officer in political controversies to such an extent as to impair his usefulness as an expert technician. It may be a matter for the psychologist to explain, but nevertheless it seems to be true, that the expert technician is rarely successful in the field of politics and public relations. Certainly, in order to get the best out of him as a technician he should be remote from political pressure. If the highway commissioner is not to possess wide discretion with respect to program and policy—a discretion which is believed too broad for any one person, and which technicians are not likely to

<sup>6</sup> It should be clearly understood that there are two distinct types of plural agencies: (1) The commission type, in which case the members actually do administrative work themselves, and (2) the board type, in which the board functions somewhat as a board of directors and employs a full-time chief administrator to assume full charge of the work. It is the latter type that is referred to here. It is apparently the former type that is referred to in the following quotation, although the word "board" is used:

"In the highway field, the managing director may be called a commissioner, chief engineer, secretary, or anything else legislatures choose, but if the highway department is to be highly efficient that person must be, in fact, the executive head of the department, and that function never can be performed by a board. By placing full authority and responsibility in the hands of one person, there is created the only kind of management that ever has been very successful in large affairs." *Op. cit.*, p. 62.

exercise wisely—the legislature itself must assume the full burden of determining the details of policy in highway administration.

This burden, which is becoming greater every year, tends to become less and less the sort of responsibility that a legislature ought to assume. Which highways should be improved this year? To answer that question in any satisfactory manner is likely to stir the anger and resentment of large sections of the population which fail to get the benefits they hoped to receive. Political leaders in such sections are likely to bring pressure upon the department, to put pressure upon the governor, and to seek the support of legislators in an effort to compel the highway officials to do what they want done. Politicians may launch a campaign of abuse directed against the highway commissioners or the chief engineer in an effort to dislodge them.

Should a given highway go through certain towns and villages, or should it skirt them and leave them out of the stream of traffic? Whatever decision is made may initiate subversive pressure directed against the highway department. Should a given stretch of highway be surfaced with cement, or brick, or with something else? Immensely wealthy and powerful business interests that are concerned with this decision are quite capable of conducting undercover campaigns that may threaten the tenure and security of those who made the decisions. In a given situation, should a structural iron bridge be erected, should a concrete bridge be built, or should there be a culvert? Where much litigation and condemnation of property are involved, should a highway be straightened? A sound answer to this question may set in motion political activities that will end the career of an able man.

Let no one think that these are merely technical problems to be decided by an expert engineer. Rather, they are indeed fraught with grave political consequences. High-class engineers may lose their positions, and the political careers of highway commissioners may be jeopardized and wrecked, because of the way in which these questions are answered. These are questions of *policy*. No one department chief can hope to answer them and still survive unscathed. And the enemies he makes are likely to be far more powerful politically than are his friends. His supporters disappear, once they have gained their objective—the improved highway, the bridge, or the particular type of improvement they desired.

Thus, *for his own good*, the technical expert should not be finally responsible for decisions in these matters. His advice would be invaluable, to be sure, and he should give it freely and forcefully. Even doing that is always likely to involve him in political difficulties. But the final decisions should be made by a plural agency—a board

or a commission—and the plural agency itself should be insulated against political pressure so far as possible. No type of organization affords a perfect safeguard.

Engineering progress has been such that new possibilities for experimentation in highway construction are constantly appearing. A good highway department should be in position to explore these new possibilities without having to obtain legislative authority for each new undertaking. When that is the case, the highway department is seriously impeded. The single commissioner must content himself with doing only what the legislature has authorized, even though legislatures cannot give such matters the attention they deserve. In consequence, progress is sure to be retarded because the legislature is overloaded with matters it should not have to consider and because the single commissioner is more or less stultified.

As an appointee of the governor, the single commissioner may be expected to lose his position whenever a new governor comes into office. Plans are in progress of development, programs are partly fulfilled, technicians have been put to work on problems after long and thorough consultations with the chief—and the chief suddenly loses his job because the state abruptly turns Democratic or Republican as the case may be. This is bad for administration in any area, and particularly bad in the realm of highway administration where so much depends upon long-time planning and the gradual development of well-rounded programs. The plural agency makes possible the steady, slow development of these long-time programs, and the continuance in office of the chief technician who has worked upon them.

It would seem, then, that a highway department ought to be in charge of a plural agency. The members should be appointed by the governor, with the consent of the senate, for overlapping terms. The board would not need to be large, five or seven would be enough, and some of the members, though probably not all of them, might well be experienced engineers. The members would not put in full time, but they would need to meet rather frequently and give their attention to numerous problems that would constantly be arising. Lay members should be particularly useful in connection with determining policies of highway development.

The board would employ a chief engineer, who in turn would appoint all other members of the organization, subject to the procedures established by the bureau of personnel administration. It is to be expected that such a chief engineer would be in very close and frequent contact with members of the board, and some of them at least should be familiar with engineering practice. It should be emphasized again

that this matter of professional relationship and identity of professional interest between the governing agency and the chief administrator, the chief engineer, is far more important in this field of administration than it is in most others.

#### RESPONSIBILITIES OF THE STATE DEPARTMENT

There is every reason to insist that the state highway department should have under its complete control all those principal highways toward the development of which the federal government contributes funds. At present this is not more than 7 per cent of the entire public highway mileage of a state. But as has already been made sufficiently clear, this maximum is today of no significance in many states, since their highway departments have jurisdiction over much more than 7 per cent. The federal government is interested in having the state highway department exercise authority over highways toward the development of which it contributes funds, and those are the highways that are important enough to be considered part of an interstate system. The state itself may well choose to vest in its highway department not only control over these important highways but also those which may be looked upon as vitally important in a state-wide system. The federal interstate system contemplates connecting the principal cities of the country and making it possible to travel across state lines on a few interstate trunk highways. A comprehensive state system would contemplate connecting the county-seat towns and also maintaining a few inter-county highways running entirely across the state. Just how great this mileage should be would depend considerably upon the state in question. It might be twice the mileage of the federal system, and it might be much more than that.

It is this mileage—the state system—that should be under the authoritative control of the state's department. By authoritative control is meant positive control, not negative. Negative control may well be exercised over the county system, if not over the entire highway mileage of the state. Positive control implies the right to deal with the problems of construction and maintenance directly, without interference on the part of local authorities.

Within the limits of legislation fixing the maximum mileage of the state system, the department should have power to determine what highways are to be included. This having once been done, it would be the duty of the department to evolve plans for the development of the system. It is to be supposed that all these highways

would ultimately be hard surfaced. But there are many stages in the development of a highway to this point. Many older highways would need to be straightened before it would be feasible to start improvement operations on a large scale. This sometimes involves condemnation and the purchase of right of way. This slow and troublesome procedure should be the responsibility of the state department. Widening the right of way and rounding out the corners also involves the condemnation and purchase of private property. In the early stages of the development of a state system, this problem may delay progress for many years and may also absorb a very large proportion of the available funds. Failure to estimate future needs has often led to the necessity of having to do much of this slow preliminary work over again. Highways that were completed and paved twenty-five years ago already have proved to be too narrow, and to contain curves that are too abrupt for modern high-speed cars. In order to eliminate these curves and to widen the highways it has become necessary to go through all the preliminary work of re-mapping and condemnation. Nearly every highway department in the country has had to do some of this, and in many states it has become a difficult and expensive matter.

Once the system is laid out, then the process of improvement begins. The entire mileage needs to be brought to proper grade, and this may have to be done long before funds for surfacing are available. It should be properly done at the outset, with suitable arrangements made for drainage and for establishing a solid roadbed. In this, local authorities often fail lamentably. Either they fail to do what needs to be done, or they blunder badly in their efforts. To guarantee proper development of this sort, responsibility should be centered in the state department.

When it comes to the point of surfacing the highways and installing permanent bridges and culverts, the department can hardly hope to escape tremendous political pressure. It is virtually impossible, and certainly most impracticable, to attempt to do this at a uniform pace throughout the entire state. Nevertheless, someone has to decide which highways shall be developed, and how, and when. This decision should devolve upon the board in control of the department. Here, then, is one reason, why a plural agency should be in charge. No one person should have this responsibility, nor should a legislature assume it.

Factors that bear upon the need for developing certain highways in advance of others are far more complex than the casual observer would ever suspect. Density of traffic needs to be measured accurately.

Need for accommodating urban and rural population centers in such manner as to develop business, promote agriculture, and facilitate passenger traffic, is a complicated matter that can be approached in at least a quasi-scientific manner. It ought to be so approached, and the state department ought to be best able to do it. Too often in the past it has been the influence of powerful politicians and the exigencies of logrolling and trading favors that have been determining factors.<sup>7</sup> This is sure to be the case if responsibility rests with the legislature itself. Political pressure would be certain, of course, to penetrate into any sort of administrative agency that could be devised. But when a board is composed of high-class men, a majority of whom have a background of professional training and sit for relatively long, overlapping terms, then the baneful effects of such pressure should be minimized.

It should not be supposed that the legislature would completely abandon control over this aspect of highway planning. The legislature could give instructions to the highway department any time it saw fit. But the main point is, it should come to be understood that the chief responsibility was that of the highway department. In so far as the department exercised its discretion wisely, one could expect that the legislature would be willing to give it a fairly free hand. After all, most good legislators would be only too glad to be rid of a responsibility for deciding such matters, so long as the problem was handled properly.

A large amount of good work has been done by the recently created state planning boards. They have sponsored many surveys that have shed light on the need for developing highways so as best to serve the purposes mentioned above. One reason why they have been able to do so much good work at such a rapid pace is that they have been strictly nonpolitical and have had no power. At first thought it might seem to be anomalous that a government agency should be able to do good work because it has no power, but nevertheless that is unquestionably the case. Highway departments themselves could not have done it because they would never have been allowed to divert their available funds for the purpose. Besides, there would have been immediate apprehension that authoritative action would follow upon the surveys. Ironically enough, political pressure was obviated and sidetracked because the work of planning boards was wholly of an

<sup>7</sup> "It is almost an axiom among the men engaged in state highway work that, eventually, they will find it necessary to leave the service because of political opposition. The outstanding need at the present time is for correction of this particular condition." *Op. cit.*, pp. 54, 55.

advisory and exploratory character and no immediately conclusive action was intended.

In the long view, however, the most important achievement of the planning boards in this area has been to point the way—to show what can be done when these problems are attacked by able students who know how to use modern techniques. State highway departments should be allowed to carry on in the paths that have been marked out. They should have as part of their departments permanent divisions or bureaus charged with responsibility for conducting surveys continuously. Populations shift, new industries develop, the scene is ever changing; in consequence, highway plans should be constantly developed to keep pace with varying requirements. Certain sections of the state will need paved highways far more than other sections. Gravel or crushed-stone surfaces will be quite adequate for certain highways. Still others can be left unsurfaced until new conditions indicate a need for surfacing.

Responsibility for highway planning is great indeed. It must not be forgotten that although certain business and agricultural interests are important in determining the nature of highway planning, actual improvement of highways in areas where factors of need are not at the moment apparent lead to the emergence of business and industry that did not exist before. Thus highway planning and development not only serve existing needs but have a forceful bearing upon the development of new interests. To neglect the improvement of highways in a given area because there appears to be no pressing need at the moment might be to condemn that area to a backward status indefinitely. Such a thing should not happen, but it requires vision, experience, and constant study to avoid it. Small wonder that highway departments often find themselves the center of political controversy. Small wonder that highway departments are often compelled to build highways which the builders themselves well know are really not needed. Small wonder that they are prevented from developing the highways which they know are most needed. It should be the aim in every state to set up a highway department as effectively insulated from political pressure as any such agency can be, and then to give it power and authority to do intelligent planning and to follow the plans.

#### WORK OF THE DEPARTMENT

There is no end to the work a highway department can do in studying and experimenting with the various engineering techniques



that may be utilized, and with the qualities and characteristics of surfacing materials. Progress in this direction has been very rapid indeed. Highway departments should have opportunity to experiment and to introduce new methods and standards of road improvement. This involves the assumption of considerable responsibility; it should be assumed if the state is to enjoy the benefit of progress in the engineering sciences.

It has long been a moot question whether or not governmental agencies should carry on construction work directly, or enter into contracts with private concerns capable of doing the work. No sweeping and conclusive answer can be given to this question. But certainly a state highway department should be adequately equipped in every way to engage directly in all engineering operations necessary to highway construction and maintenance. This would not obviate the practice of also awarding contracts, in situations where the department itself might not be in position conveniently to do the work. Highway construction lends itself to subdivision of labor with only slight inconvenience if any. Contracts can be let for making cuts through hills, for filling in low areas, for doing preliminary grading, for hauling dirt, for construction of bridges, for doing cement work, and for various other aspects of the entire undertaking. The department should be largely free to handle the problems as might seem best under any given circumstances. But in any event, the department itself should be fully equipped, and it should proceed with the work of highway improvement just as rapidly as the funds available make it possible to do so.

Due to the fact that in a number of states the highway department has virtually completed the work it was originally created to do, an interesting dilemma has been reached. That is, the highway mileage originally entrusted to the state department has been adequately surveyed, highways have been for the most part brought to grade, many roadbeds have been surfaced, and bridges have been built. A large organization has been built up, continuing sources of revenue have been tapped, and the department is fully prepared and eager to go forward with the sort of work it has been doing. The question is: should more highways be taken away from the local authorities and put in charge of the state department, or should the state department be partly demobilized to the relatively small size that would be necessary in order to carry on maintenance work chiefly, and construction work on a much reduced scale? This situation brings up squarely the troublesome issue of state centralization. The local authorities are likely to be as much opposed as ever before to having

their jurisdiction still further invaded. There is not the same compelling pressure for doing it as existed when the federal government first offered money to the states on condition that a state agency would have the administration of it.<sup>8</sup> It would seem that in some states the state department is in danger of being reduced to skeleton proportions. In other states the work of the department has been so notably good that further steps in the direction of centralization may be expected whereby the state department will assume a large measure of negative control or supervisory power over local operations.

But no matter how this issue may have been met in the various states, there is sufficient work left for the state departments to do, provided state legislatures are disposed to finance the undertakings. These newer possibilities have already been touched upon in referring to the necessity for widening and straightening highways built a generation ago. This is not all. Study of traffic problems and highway needs is leading to a realization that an enormous extension of highway construction which local areas could never be expected to undertake is going to be necessary in the future. Here lies an opportunity for the state departments. Four-lane highways are badly needed where now the conventional two-lane highways carry all the traffic. Wholly new highways need to be carved through field and woodland in order to relieve the existing traffic congestion. Grade crossings need to be eliminated. The underpass and the clover-leaf arrangement at important intersections can be utilized to a much greater extent than they have been in the past. The idea of developing special highways for trucks is being studied and will doubtless prove practicable. The federal government will lead the way in all these ambitious undertakings, but the various state departments must bring them to fulfillment.

Roadside landscaping and beautification have great possibilities. Some states, notably those on the North Atlantic seaboard, have al-

<sup>8</sup> Chapter 241.—An Act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes.

*"Be it enacted. . .*, That the Secretary of Agriculture is authorized to cooperate with the States, through their respective State highway departments, in the construction of rural post roads; but no money apportioned under this Act to any State shall be expended therein until its legislature shall have assented to the provisions of this Act, except that, until the final adjournment of the first regular session of the legislature held after the passage of this Act, the assent of the governor of the State shall be sufficient. The Secretary of Agriculture and the State highway department of each State shall agree upon the roads to be constructed therein and the character and method of construction; *Provided*, That all roads constructed under the provisions of this Act shall be free from tolls of all kinds." *United States Statutes at Large*, XXXIX, Part I, chap. 241, pp. 355, 356.

ready shown what can be done in this field.<sup>9</sup> Other states will certainly follow in this path. These are things that state departments can do if the public once demands them. Indeed, if highway transportation develops in the next twenty years as it has developed in the past, state departments will scarcely be able to keep abreast of it. Closely related to the matter of roadside beautification is the problem of controlling roadside advertising, not only in the interests of scenic beauty but in the interests of safety. This falls within the scope of a highway department. Business interests are, of course, definitely concerned with this. They have been powerful enough to prevent much being done about the problem. Nevertheless state highway departments should have power to deal with it.

Speaking on this question, the Governor of New York, in his message of January 1, 1936 said: "The state should regulate billboards and structures and service trades along state highways to preserve the beauty of our countryside and to increase highway safety and efficiency.

"At curves, grade crossings, intersections, and points close to the highway, we find billboards, structures, and various contraptions, purposely devised to distract the attention of the driver of the motor vehicles. These are a grave danger to our motoring public. I would recommend, therefore, that the State Department of Public Works

<sup>9</sup> "The services of the landscape architect are now recognized by many authorities as being essential for the planning and development of fine highways and parkways. Obviously, this means more than merely sending a man into the field to "landscape" a highway after the contractor has completed his job. It is true, of course, that much may be accomplished even at this stage of development, but the great opportunity for supplementing the engineering work (the importance of which is in no way lessened) lies in the original reconnaissance work, acquisition of rights of way, surveys, and planning. The highways should be studied in plan, profile, and section with a view toward their scenic possibilities, as well as from the engineering viewpoint. Beauty can often be combined with utility at little or no extra cost. Adequate study of alignment and profile would preserve and make accessible outstanding scenic views. Avoidance of ugliness, and reduction of cost may frequently be affected by change of alignment, elimination of excessive cuts, or by planting." New York State Planning Board, *Bulletin No. 7* (1934), p. 1.

"The promotion of social enjoyment through appeal to the aesthetic is the urge back of highway beautification. Maine is fortunate in having an aggressive organization to champion the cause of roadside improvement; the planting of trees and shrubs along main arteries of travel, the removal of dumps and unsightly buildings and especially the elimination of promiscuous and unsightly signs from close proximity to main highways. The need of legislation to protect its scenery (one of the State's biggest recreational assets) from encroachment of commercial signs, was indicated from a state-wide survey conducted by the Maine Federation of Garden Clubs; 'more than 1600 signs marred the beauty of the road between Kittery and Portland, and seven to the mile lined the Arnold Trail to Jackman.' " Maine State Planning Board, *Report: 1934-1935* (Augusta: State of Maine), p. 216.

be authorized to regulate and license outdoor advertising along our rural highways.”<sup>10</sup>

Another duty of state highway departments is that of designing and installing highway signs, markers, and warnings. With a view to controlling automobile traffic in the interests of safety, it has been discovered that much of this sort of work can be done. Signs and markers intended to prevent passing on curves and hills not only are useful to the careful motorist but also assist in the enforcement of the law. It is not enough that the law should forbid passing under hazardous circumstances, for, in case of accident there can nearly always be an argument. What is a hill? What is a curve? So far as possible there should be objective tests by which it can be determined just who was in the wrong. If a highway sign forbids passing between two points clearly indicated at the roadside, then anyone who attempts to pass when within those limits is definitely in the wrong. Or if there is a colored line or other indication in the center of the highway where it rounds curves and passes over hills, he who crosses the line in an effort to pass is in the wrong.

Such objective measures not only help the doubtful motorist to determine what he should do, but they also help to simplify litigation growing out of accidents. Still more important, they afford the highway policeman a definite measure for determining when to repress the reckless driver. A heavy burden rests upon the policeman who covers accidents. What is reckless driving? No doubt it has been a sensible thing to remove the old-time speed limits in the open country, as has been done in a majority of the states, but the present state of affairs puts a difficult problem upon the policeman. He must use his own judgment, and naturally he is disposed to avoid taking action that may be repudiated later by his own superior officers or by the courts. The more objective measures he can have, the better. Those who criticize the police for not doing better work seldom appreciate the extent to which they are obliged to exercise their own judgment in the enforcement of laws that are not clear. Nowhere is this problem more vexing than in suppressing reckless driving. The laws which forbid driving when intoxicated illustrate the point. When is a man intoxicated? Small wonder the policeman is reluctant to make an arrest on the charge of intoxication unless the case is perfectly clear and unless reliable witnesses are at hand. Every aid which the highway department can possibly devise to assist the police in their duty to suppress dangerous driving should be exploited to the utmost.

<sup>10</sup> *Department Report of the State of New York, "Governor's Message,"* LIII (1936), 11.

The question arises as to what responsibility the highway department should have for enforcing the motor vehicle laws. Should the highway department maintain a police patrol, or should law enforcement be left to some other agency, particularly to the state police? In many states the responsibility is scattered. A bureau in the department of state may have patrolmen upon the highways to see that drivers have their licenses and that cars are properly registered. A commerce commission or transportation bureau may have a staff of inspectors charged with seeing to it that trucks are not overloaded and that busses are equipped with proper safety devices. The state police—if there are any—enforce the state traffic law; the county sheriffs—if they have sufficient assistants—also enforce this statute. This scattering of responsibility is not good. But should any portion of it be centered in the highway department?

It has been noted that many of the departments of administration have at least some quasi-police functions. The conservation department has its game wardens, the health and labor departments have their inspectors, and the education department has its truant officers. All these officers perform police functions. What police functions, then, should the highway department have? One answer might be that the highway department should have as many police as might be considered essential for the preservation of its own work and the fulfillment of its principal duty. That is a reasonable test to apply to this problem as it arises in all other departments. Since the highway department is primarily concerned with preserving the highways, it should have such police power as might be necessary to prevent overloading that tends to ruin pavement, to apprehend those who destroy road shoulders by careless driving, and to keep tractors having lugs off the surfaced roads.

But subdividing the enforcement of motor vehicle laws to a high degree becomes undesirable. It would be ridiculous to clothe a police officer with power to apprehend a truck driver whose load might be too heavy, but to leave this officer with no responsibility for checking up on rearview mirrors, brakes, and the driver's license. It would likewise be foolish to have a staff of quasi-police officers charged with checking up on headlights, brakes, driver's license, etc., but having no responsibility for suppressing reckless driving.

The fact is, the highway department is pre-eminently a service agency. It is not at all necessary that it have any control functions whatever, and it would be better that it should not have. Of course the highway department is vitally concerned with unlawful practices that tend to destroy highways, among which is overloading. But that

is not to say that the department needs to maintain a special staff of policemen to deal with this problem; and if these police attempt to deal with other problems, they quickly go beyond the proper scope of a highway department. If there is no state department of police, there certainly ought to be a highway patrol unit charged with enforcing *all* the motor vehicle laws, with the support of the local sheriffs and police. It is not desirable to scatter this function among other departments. The highway department might properly determine overloads and tire sizes for trucks. These are engineering problems. It should not undertake to exercise police functions, for this would bring about bad integration.

Governor Lehman of New York in his message to the assembly on January 1, 1936, made a fruitful suggestion concerning traffic regulation. He pointed out some things which a state highway department might do if it were granted adequate power. He said: "To me, it seems clear that the creation of a traffic commission is desirable. At the present time the Commissioner of Highways, the Superintendent of State Police, and the Commissioner of Motor Vehicles, each has vested in him some duties or powers with respect to motor traffic. But I am convinced that better results will be obtained if most of those powers be transferred to a traffic commission. Among other functions, I think such a commission should be vested with authority to investigate traffic conditions and devise means of improving them, to advise and assist the officials of cities and incorporated villages on their traffic problems, to prescribe zones and speed limits on highways outside of cities and incorporated villages, to regulate and prescribe the installation or removal of traffic signals or colored lights which interfere with traffic signals, to propose means for eliminating accident hazards, to formulate more uniform highway safety programs, and to co-ordinate the efforts of all interested individuals and agencies engaging in safety education."<sup>11</sup>

#### RELATION TO LOCAL AREAS

Earlier in this chapter much was said about the responsibility of local areas for a considerable portion of the highway mileage. It is altogether likely that, in a great majority of the states, the counties at least will for many years to come retain a large measure of control over the less important highways. The problem then arises as to the proper relationship between the state department and the local authorities.

To a greater or less degree the state department should be in posi-

<sup>11</sup> *Op. cit.*, pp. 10, 11.

tion to exercise what has been called negative control. This implies that local authorities—county boards of supervisors or commissioners—would enjoy the prerogative of initiating policies with respect to highways within their jurisdiction, and would have full power to execute those policies, subject to the approval of the state department. The local authorities would also have full charge of maintenance work, which is a matter of importance.

The question then arises as to the nature of the negative control which the state department is to exercise. The state department should have power to approve or disapprove all projects that would involve permanent surfacing. Ordinary drainage and grading operations would not need to be submitted for approval, but when local authorities propose to go to the expense of permanent surfacing, all details of the plan should be submitted to review in the state department. Local authorities should not be permitted to waste public funds on highway surfacing. Certain minimum standards must be met. Often this would mean that the state department would insist that a much better and more expensive quality of work be done. This leads to the complaint that the state tells the local area what it must do. To express the matter that way is to put the emphasis in the wrong place. Rather, it should be said that the state department tells the local area what it *cannot* do.

The state department would have comprehensive plans and specifications designed with a view to the ultimate improvement of all the highways of the state. Local authorities should have power to improve their own roads to whatever extent their financial resources would permit, but in so far as they chose to go forward with permanent improvements, they should be obliged to conform to the state department's specifications. This is very important for the reason that local authorities often do not appreciate the need for measuring up to good standards. And for another reason also. Local authorities, being popularly elected, are often under great temptation to do things that will gain for them immediate and temporary public support. They do not have money available for the improvements they would like to make in accordance with high-class specifications, and thus they are tempted to spend money on wholly inadequate though temporarily satisfactory improvements of poor quality. They will spread gravel and crushed stone on roadbeds that have not been brought to grade and are not ready to receive surfacing material, in order to satisfy the public demand for an all-weather surface. In a few years the top covering is gone, the work has to be done over again, but nevertheless the local politicians have won some temporary support. They are in-

clined to install bridges that are good enough for the time being, but which in the course of a few years prove to be wholly inadequate. They propose to surface old roads without going to the expense of straightening them, and thus in the long run they merely waste money. This problem is a very difficult one, for at the moment it often seems to the people in the community affected that the state authorities are demanding the expenditure of more money than is necessary. Farmers and people who live in the rural areas are desperately eager to "get out of the mud," and they often cannot appreciate the idea of long-view economy.

The state department must bear the brunt of this pressure. Local authorities cannot do it. Hence, the highway department should have full power to approve or disapprove all major projects that involve permanent surfacing, the erection of permanent bridges, and the altering of right of way. Furthermore, all contracts for highway work beyond a certain minimum sum should be submitted to the state department for inspection and approval. These requirements are often irksome to local authorities, but it is eminently desirable that they be imposed.

Subject to this negative control, the local authorities might well be left free to proceed with highway improvements as they choose. The state department should, of course, have power to inspect all details of the work upon which it has passed judgment. In those states where the counties employ highway engineers, this official would presumably be in close touch with the state department, and also, presumably, would have an adequate appreciation of the importance of the standards fixed by the department. It would be he who would prepare the plans and specifications for local projects, and it would be he who would take them before the state department and defend them, and seek permission to go forward with them.

Routine maintenance work could be left wholly in the hands of the local authorities, but even this should be done under the supervision of a competent highway engineer. The old prejudice against technical experts in highway work is gradually breaking down, but it will be a long time before the public comes to a full appreciation of the shocking waste entailed when work is improperly done.

The relations between the state and local authorities are greatly complicated by problems of finance. The work of the state department is likely to be financed almost entirely by funds that come from three sources: a gasoline tax, the automobile license taxes, and aid from the federal government. Local authorities are not in position to tap any



of these sources directly. To a very large extent they are compelled to rely upon general property tax levies. Already this source of revenue is everywhere proving to be wholly inadequate, and the situation is destined to become steadily worse. Property taxes cannot be increased to keep pace with the demand for improved highways. It thus becomes necessary for some means to be found whereby local areas can share in the funds derived from gasoline taxes and license fees.

Formulas have been worked out for distributing portions of these funds to the counties. Various factors are recognized as important. The amount which the county itself is able to raise through property taxes is one factor. Proceeds from the other sources might be distributed to counties in proportion to the assessed value of the property in the various counties. But it would not be equitable to rely upon this formula alone, since doing so would mean that poor counties would get the least and rich counties would get the most. Furthermore this plan takes no account of the extent of highway mileage in a county, nor the cost of doing highway work, which depends largely upon the character of the soil, the streams to be bridged, the hills and valleys to be coped with, and the availability of materials. These factors are very important, but no fixed rule can be applied to them. The state department must be charged with responsibility for determining the relative needs of counties in the light of these circumstances. A poor county where there are many hills and streams and where the soil is rocky deserves a much larger proportionate share of state funds than a rich, level county where the costs of construction are relatively light.

Actual highway mileage affords an easy objective rule, and usually this factor is the principal one in formulas adopted for distribution of state funds. Obviously it is not wholly equitable. Its chief virtue is its objectivity. Miles of highway can be accurately measured and legislators find it easiest to compromise on such a rule. But nevertheless the issue is always prominent in state politics, and is doubtless destined to be until the state takes over all the highways. Poor counties want a share of state funds in proportion to their need. Rich counties want to share in proportion to assessed values. Counties where construction costs are necessarily very high want that factor to be considered. Counties where costs are low want to share in proportion to actual highway mileage. Ironically enough the most important factor—that of costs—is least easily measured, and hence less likely to be taken into consideration.

The distribution of state-collected funds leads to another problem.

Many people who are well qualified to judge are convinced that it is a mistake to permit local authorities to spend money that is bestowed upon them by the state. The sense of responsibility is greatly weakened when authorities in the local areas receive funds which they themselves did not raise. Whenever local authorities take the responsibility for levying a tax upon property owners in their community, they are far more conscious of an obligation to expend the funds carefully than when they have received the money from a state officer and have themselves had nothing to do with raising it. Thus it is argued that the state should supervise the expenditure of all state-collected funds that are made available to counties. On the other hand, local authorities prefer to receive their share of state-collected funds without restriction as to how the money shall be expended. Ordinarily this would mean that counties would have state-collected funds to spend on highway work that would not all come under the negative control discussed above. But to concede the validity of the argument that state officers should supervise the expenditure of state-collected funds is to capitulate ultimately to the demand for state centralization. It is rapidly coming to pass that local areas will be unable to carry on much important highway work without state aid.

It would seem that the principle of negative control should be adequate, although it would no doubt leave the local areas free to spend some state-collected funds without state supervision. Let a portion of these funds be distributed in accordance with a formula that would take into account assessed values, area, need, and highway mileage, and let the state department have power to pass upon all important projects of a permanent character. Whenever this practice proves to be unsatisfactory, it seems that the best solution would be simply to extend the mileage over which the state department should have full control.

#### STAFF AGENCIES IN THE DEPARTMENT

Many state highway departments are so large and have so much money to spend that they need to maintain staff agencies similar to those which serve the state itself. Thus, a large highway department ought to have a purchasing agent and an auditor, and also, perhaps, even a personnel director of its own. In case this is deemed necessary, these staff agencies would perform for this one department exactly the same functions which the comparable agencies perform for the state. All bills incurred by the various bureaus and divisions would go to the office of the departmental auditor, there to be checked and approved before being paid. The purchasing officer for the department would

be responsible for buying the huge quantities of road material and machinery and other things needed.

A nice question arises as to whether or not the purchasing officer in the department of highway administration should be in any way responsible to the central purchasing office of the state. Many able highway administrators would stoutly maintain that purchasing for the highway department should be done through one of its own officers, who would be in no way responsible to any other agency. They would justify this contention chiefly on the ground that this department makes very large purchases of a special type of commodity that is not used by any other agency. This and other considerations that arise in connection with centralized purchasing were discussed at length in Chapter VII. There is no doubt that a highway department could probably make out a case for the right to independent purchasing more justifiably than any other agency in the whole administrative structure. But the case is not convincing. For reasons sufficiently discussed in Chapter VII, the purchasing officer in the department of highway administration should be a subordinate of the central purchasing office. A highway department is large enough and important enough to have a special purchasing officer, but no department is important enough to have its purchasing officer wholly independent of the central office. In actual practice, the departmental purchasing officer would function almost as though he were independent of the central bureau, and that is desirable; but the organic connection with the central bureau should be maintained nevertheless.

The same conclusion would be reached with respect to a special departmental personnel officer, though perhaps the case for having such an officer would not be so strong as the case for having a special purchasing agent. Some highway departments have special attorneys. A great deal of legal work must be done for this department. Particularly is this true when new rights of way have to be established. But even when this is the case the attorney for the highway department should be ultimately responsible to the attorney general. These are all staff functions and there should be no compromising with the fundamental proposition that staff functions should be concentrated in the central staff agencies, under the control of the governor.

#### INTERNAL ORGANIZATION

The internal organization of highway departments differs widely in the various states.<sup>12</sup> It is suggested that a legal division and an audit-

<sup>12</sup> See Agg and Brindley, *op. cit.*, pp. 63, 65, 66, and 69, for detailed charts depicting internal organization of various types.

ing division be attached directly to the highway department, that is, the legal adviser and the departmental auditor would not be responsible to the chief engineer. But under the chief engineer there might well be at least seven bureaus, subdivided into such divisions as might be necessary.

One bureau would be responsible for road and bridge design and for drawing plans and specifications. It could also be responsible for the broader aspects of highway planning. Suitable divisions in the bureau would be concerned with signs and markers and with highway beautification and landscaping, as discussed in the preceding pages.

Another bureau would be concerned with purchasing, under the conditions discussed above.

A third bureau would carry on the major task of highway construction, and would be responsible for inspecting construction work done by private contractors and by local areas, in so far as the state was concerned.

Highway maintenance should be entrusted to a separate bureau. Bridge construction is a highly specialized aspect of highway work and should be done through a separate bureau. And there ought to be another bureau concerned with testing materials.

Still another bureau would have the responsibility for inspecting and passing upon plans and projects initiated by the local areas, in accordance with the idea of negative control as outlined in this chapter.

Thus organized, a state highway department would be adequately prepared to do all the things that are ordinarily expected of highway departments today, and it would be in position to expand its activities and to go forward toward the fulfillment of the greater objectives which lie in the future.

#### OTHER PUBLIC WORKS

Every state has some engineering and construction work to do in addition to building highways and bridges. Public buildings have to be erected and maintained. Dams have to be constructed, canals built, and reservoirs designed. Cities and towns build electric light plants and water works, sewage and garbage disposal plants are being constructed, and there are many other undertakings of an engineering character that governments must undertake. What agencies of state administration should be set up for these purposes, and what responsibilities should the state assume?

In discussing the work of certain other departments of state administration, it has been clearly assumed that they would be in charge

of certain engineering and building operations themselves. Thus, it is clear that a department of public welfare would need to construct buildings—hospitals and penitentiaries—not to mention minor buildings. The department of education would be concerned with building libraries and other structures on the state school campuses, and should be prepared at least to give advice with respect to public school buildings everywhere in the state. The department of conservation would be expected to assume responsibility for building dams and for dredging rivers and lakes. It is right that these departments should have control over such construction work. It would be carrying the idea of integration too far to require that responsibility for all construction work should be centered in one place.

But it should be observed that in almost every instance these other departments would let contracts for their construction work—they would not do the work themselves. The highway department is the only one that needs to be fully equipped and prepared to undertake large engineering projects directly. This is as it should be. The state should not maintain more than one office, bureau, or department, fully equipped to carry on major engineering projects directly. To do so would increase the overhead costs and necessitate the maintenance of duplicate staffs of technical experts, and would promote interdepartmental rivalries and jealousies and so lead to contradictory practices in matters of engineering and construction. It follows that a bureau in the department of highways and public works could assume responsibility for all engineering and construction work which the state itself might choose to do directly. In this connection the bureau could be a service agency for the other departments. They would have the alternative of requesting the bureau in the department of highways and public works to do construction work for them, or they could let private contracts. There need be no fixed rule with respect to which policy they should pursue, unless the legislature chooses to give instructions. Thus the bureau should be prepared to build a museum for the university, or to erect an orphanage for the department of public welfare, or to construct a dam for the department of conservation. On the other hand these departments could let private contracts if they preferred to do so.

Presumably the bureau would be in full charge of public buildings and grounds at the state capital, and would be prepared to undertake such building operations of a miscellaneous character as the legislature might require. The state architect would be in this bureau and his services should be available to all the other departments.

No one knows what new and ambitious undertakings states may in

the future essay to launch. Projects for rural electrification that are already under way are rather breath-taking in their implications. The various state planning boards have given much thought to such projects and have outlined undertakings for the future that would stir the imagination and enthusiasm of men who might be in charge of a bureau of public works. They should be given an opportunity to do things and to experiment with new ideas.

It would also be appropriate for this bureau to inspect and approve all plans and specifications for public works to be undertaken by any of the state departments. Of course the bureau should have nothing authoritatively to do with passing upon the wisdom or propriety of a project which some other department might wish to undertake. Its function should be solely that of passing upon the project in its technical aspects. Thus thoroughly sound, uniform standards of construction would be maintained.

In this connection, also, the services of the bureau should be available to cities, towns, counties, and school districts, in an advisory capacity. Indeed, the legislature might see fit to require this bureau's approval of technical items before local areas would be permitted to let contracts for engineering projects beyond a minimum size. Thus, when cities undertook to build electric light plants, or counties to build courthouses or hospitals, the approval of this bureau on the technical aspects of the project might be required. This would be a very wholesome thing.

If the federal government were to continue to make substantial grants-in-aid to the states for public works through such agencies as the WPA or the PWA, this bureau might very well assume full responsibility for their administration. When the federal government began to do this during President Franklin D. Roosevelt's first administration, few states were prepared to assume the responsibilities involved. Most of them had to set up hastily contrived new agencies of state administration in order to co-operate with the federal government. This was very unfortunate and led to many blunders and much wastefulness. A permanent bureau of the sort described here could have taken on these new responsibilities with ease. Every state should be thus prepared.

In case the federal government indefinitely continues to assist in financing public works of the character now being sponsored by the Public Works Administration, states may find it desirable to establish and maintain separate and distinct departments of public works in no way organically related to the highway department. So far as most of the states are concerned however, the desirability of such a step

would seem to depend upon the future policies of the federal government.

A minor function of the bureau of public works would be to determine qualifications, and to grant licenses to those who were qualified to practice architecture and engineering in the state. This is often done through a wholly separate and independent administrative agency. The practice illustrates merely another example of bad integration.

The chief of this bureau could be known as the superintendent of public works. His bureau would be subdivided into appropriate divisions in order to carry on the activities described here. There might well be a construction division, a division of plans and specifications headed by the architect, and a division of engineering licensure.

People of the last generation could hardly have dreamed of the gigantic strides government was destined to take in the field of public works. No wonder government was ill prepared to take them rapidly. The end is not yet. The engineer has the vision and the skill to do marvelous things for the benefit of mankind. Government agencies should be so organized as to take advantage of these great potentialities.

## CHAPTER XVI

### PUBLIC UTILITIES AND TRANSPORTATION

EVERY state in the union has enacted a considerable volume of legislation dealing with public utilities. By means of this legislation the states have undertaken to regulate the public utility corporations, to establish the conditions under which they may be organized, to determine the rates which they may charge, to prescribe the quality and quantity of service which they must provide, and to regulate their methods of doing business and their financial operations. Public opinion is overwhelmingly in favor of having the state do these things. Although they may not have been done very well in the past, there is no reason to believe that any one of the states will relax its efforts to perform the functions which public opinion so definitely demands. An eminent authority on this subject says: "Whatever the future developments may be, one thing seems certain: There will be no return to the freedom of ordinary competitive enterprise. If railroads or other utilities believe that with the breakdown of regulation they will be permitted to return to their old status, and manage their business without public regulation, they are out of touch with conditions and the spirit of the times. There is no possibility that they will ever be given greater freedom than they have at the present time. If regulation breaks down, the chances are overwhelming that it will be replaced, not by turning the management back to the companies free from public control, but by greatly extending the control, or by taking the properties and instituting ventures which will have their own problems and uncertainties. A collapse of regulation would call for radical proposals which are untried, and probably costly and unwise."<sup>1</sup>

In addition to having a considerable volume of legislation on the subject, it would appear that every one of the states, except Delaware, maintains one or more administrative agencies which have been set up for the purpose of interpreting and applying this legislation. But there is great variety in the character of these agencies. In some cases, more than one separate and distinct agency deals with some aspect of the problem. In some cases, one officer—a commissioner—has charge.

<sup>1</sup> John Bauer, *Effective Regulation of Public Utilities* (New York: 1925), p. 366. (By permission of The Macmillan Company, publishers.)



In most cases a plural agency—a commission—has responsibility. Some of these commissions are *ex officio* bodies, some of them are composed of members who are appointed. About one-third of the states provide for popular election. The scope of their power and responsibility varies greatly, not only with respect to the kind of operations over which they have supervisory power, but also with respect to the measure of control which they may exercise. Thus, simply to know that a state has a utility commission is not to know what utilities it may regulate or the extent of its power. Or to know that a state has a railroad commission is not to know whether it has control over utilities other than railroads. This makes it very difficult to classify the states with respect to the character of administrative agencies that have to do with utilities.

Railroad companies and grain elevator corporations appear to have been the first public utility enterprises which the state undertook to regulate through state administrative agencies. Thus railroad commissions and warehouse commissioners put in their appearance. As time went on, and it became desirable to regulate other utilities, such as power plants, the responsibility may have been given to the existing commission, or a new one may have been created. But the authority of the federal government over railroads has been extended so far that the importance of state regulation has greatly declined. Other utilities have assumed such great importance that the whole problem of utility regulation has changed its complexion entirely in the last twenty years.

#### UTILITIES SUBJECT TO REGULATION

At this point it may be well to survey the scope of the problem briefly. There is still something for the state to do in the matter of regulating railroads. Nearly all the important railroads in the country today cross state lines and thus are interstate in character and come under the full control of the Federal Interstate Commerce Commission. Since 1935 passenger busses and trucks operating across state lines have been under the control of the Interstate Commerce Commission. It has been held by the United States Supreme Court that the power of the federal authorities extends to intrastate transportation in so far as may be necessary to make the regulation of interstate traffic effective. Application of this rule obviously operates to curtail the power of the states over traffic, even when it begins and ends within the boundaries of one state.<sup>2</sup> Nevertheless the state still has abundant

<sup>2</sup> " . . . it is a familiar principle of American constitutional law that the Federal Government has jurisdiction over commerce among the several States and with foreign

power over intrastate railroad, bus, and truck lines. It should be prepared to exercise this power effectively.

Aviation, fortunately, is almost wholly under the control of federal agencies. It is to be supposed that aviation could hardly be carried on to any appreciable extent without interfering with interstate aerial transportation, and thus it is hardly to be expected that states will ever have much to do with it.

The same is true of telegraph and telephone companies. Their wires cross state lines and thus they come under the jurisdiction of the federal government. The chief concern of the state with respect to these companies lies in assessing their property for purposes of taxation. That is not a problem of regulation.

Street railway lines and interurban carriers fall definitely within the scope of state power if the state itself chooses to regulate them. Many states prefer to leave street railways and city bus lines under municipal control. But it would be better that the state itself should exercise some measure of control over them. Of course that is necessary in the case of the interurban lines.

The largest problem of utility regulation today has to do with electric power and gas companies. Some states still leave these utilities under the control of municipalities, but the tendency is all in the other direction. For the most part, municipal control has been quite incompetent and ineffective. Spoils politics and corruption have often

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nations. This has been construed by the courts not only as giving the Congress authority to regulate transactions in interstate or foreign commerce but those which substantially affect that commerce. The courts have even held that commerce which is purely intrastate in character is subject to regulation by the Federal Government if it materially affects interstate commerce and would otherwise constitute an obstacle to its effective regulation. The several States, on the other hand, have power to control only such transactions and commerce as are entirely intrastate in character. It will readily be seen that conflicts of jurisdiction can easily occur in which regulatory authority will be asserted by both the State and the Federal Government. It should also be apparent that there will be many instances in which State regulation can easily be avoided by a utility through carrying its operations across the State line, even if only to a minor extent." U. S. Federal Trade Commission, Senate Document 92, Part 73-A, Seventieth Congress, first session, *Summary Report of the Federal Trade Commission to the Senate of the United States, Holding and Operating Companies of Electric and Gas Utilities*, January 28, 1935, p. 5.

"While it is impossible to fit many judicial commerce classifications into any scheme of economic logic, the courts appear to be following in a general way the economic trend of the times by continually enlarging the scope of 'interstate commerce,' and thus shifting jurisdiction over a rapidly increasing range of economic activity from the state to the federal government. This development, while productive of numerous problems of 'centralization' and 'states' rights,' is in essential accord with the increasing scope of the markets which bound American business enterprise." D. M. Keezer and S. May, *The Public Control of Business* (New York: Harper and Brothers, 1930), p. 229.

been at their worst under municipal regulation, and even when this has not been the case, city authorities have usually found it impossible to deal effectively with utility corporations.<sup>3</sup> Cities are rarely able to employ technical experts and legal talent capable of coping with those of the utility companies, and the power of city councils to fix rates has usually proved to be an empty one since the companies are so often able to prove in the courts that they are being deprived of property without due process of law. The growing tendency of electric power companies to extend their service beyond municipal boundaries into the rural areas makes it almost imperative that state control be exercised. The situation is not dissimilar to that which arises when railroads cross state lines, thus making federal regulation necessary.

Water service is for the most part provided by municipalities directly, and where there are privately owned companies they are usually under municipal control. Cities themselves also provide for sewage and garbage disposal. But when any of these services is provided by private corporations, it is altogether appropriate that the state exercise some supervision over them.

Water transportation on stream, canal, or lake, in so far as it does not come within the jurisdiction of the federal government, should be regulated by the state. But this problem would be negligible except in a few states.

Here then, in brief outline, is the scope of a state's responsibility for regulating or supervising public utilities and transportation. What sort of agency, or agencies, should the state maintain in order to do the things that ought to be done? How should they be organized and what should be their powers?

In recent years some states have abandoned their plural agencies and provided for a single commissioner to administer the laws relating to public utilities. It is difficult to explain or justify this action on any other basis than that experience under a plural agency has been extremely unsatisfactory. One can well believe this was so, for as Mr. Bauer says: "After a twenty-year struggle with rate regulation, the public authorities today are scarcely in a better position than when

<sup>3</sup> Nevertheless, Delos F. Wilcox — public utility expert — an eminent student of the problem, has this to say: "The control of public utilities is fundamentally a local or urban function, because public utility service has been primarily local and urban. The state's job is to help, and to that end a well-equipped state department or commission should be maintained, not to override and antagonize the municipalities, but to advise them and help them with accumulations of knowledge and with varied expert services. To the extent that the state has recognized this fact and has acted accordingly, it has been rewarded with the gratitude and support of the municipalities." Morris L. Cooke, *Public Utility Regulation* (New York: The Ronald Press Company, 1924), "Co-operation Between State and Local Authorities," p. 225.

they started. During these two decades they have conducted endless investigations, caused the expenditure of hundreds of millions of dollars, piled up mountains of records and opinions; and mostly have not reduced rates when fairly justified, nor advanced them when reasonably needed. They are all but helpless before the huge task of prescribing rates for the many utilities operating under greatly varying conditions, rapidly shifting prices and tremendous transitions in industrial organization—unless principles and policies of regulation are definitely established and exact methods prescribed.”<sup>4</sup>

A tendency to resort to the single commissioner is unfortunate. It means that the legislature itself must deal with a great many matters that it is not in position to handle effectively. It means that the commissioner becomes a mere ministerial officer executing the letter of the law. He cannot be given the broad discretionary power which the administrative agency regulating utilities ought to have. And it means that progress in developing new and better ways of dealing with utilities must be very slow. The situation definitely calls for a plural agency exercising broad discretion and power.<sup>5</sup> The fact that such agencies have not done particularly well in the past merely argues for striving to improve the character of the plural agency. This is a problem for the student of administration.

### THE UTILITY COMMISSION

The public utility commission might well be composed of five or seven members, appointed by the governor with the consent of the senate, serving for long, overlapping terms. This agency should be a

<sup>4</sup> Bauer, *Effective Regulation of Public Utilities*, p. 372.

<sup>5</sup> “Most railroads and utility commissions consist of three members. Exceptions are the states of California, Georgia, Indiana, Massachusetts, Michigan, Missouri, and New York, each of which has five members, and in Oregon, which now has a single commissioner. Illinois, Pennsylvania, and South Carolina have commissions of seven members. In Nevada, the state engineer serves ex-officio as the third member of the public service commission. Similarly in the District of Columbia, the third member is the district engineer, an officer in the Engineering Corps of the United States Army.

“In the judgment of the writers, the number of members should be three or five, depending on the number and scope of utilities subject to regulation in the given state. In such states as California, Massachusetts, New York, and Pennsylvania, it would be difficult for three members to handle the mass of hearings, interpret the evidence, and reach sound conclusions. In order to facilitate hearings and reduce the traveling expenses of a large number of witnesses appearing in contested cases in the course of a year, it is clearly desirable that hearings should be held in different sections of the state. When the state covers a wide area this requires the setting up of several districts, and thus a number of commissioners. Five would appear to be a maximum number desirable for the larger and more populous states.” W. E. Mosher and F. G. Crawford, *Public Utility Regulation* (New York: Harper and Brothers, 1933), p. 55.

true commission, composed of men who would devote full time to their work. In this respect the commission would differ markedly from the boards that have been suggested for the other departments. But their problems would be different. Not only would they have policies to determine and budget allotments to make, they would have quasi-judicial functions to perform. Many problems would be presented to them which would require much careful study. Their function would not be a deliberative, armchair function. They would have a student's task. They would have to study voluminous reports and documents submitted to them by the utility corporations. They would need to spend days of work upon these before they could pass judgment wisely upon the questions submitted to them. They would need to sit through long hearings, listening to the arguments of attorneys, accountants, and engineers. This sort of responsibility they could not discharge adequately if they met only occasionally or were engrossed in their private affairs.

It is for these reasons, too, that the term of a commissioner should be long.<sup>6</sup> In discussing the boards in other departments it was occasionally pointed out that terms ought to be relatively long in order that consistent policies could be developed and brought to fulfillment. But in the case of the utility commission there is another compelling reason. It is not easy to grasp the problems involved in the supervision and regulation of utilities. The problems are very complex and difficult. If a new commissioner is not already familiar with them, much time and study will be required on his part before he will thoroughly understand what is involved.

This is one reason why utility commissions have not performed particularly well. Men have come to the position only partly prepared for their task. Often they have been deeply prejudiced either for or against the utilities before they became members of the commission, and short terms have afforded no time for their prejudices to abate or for them to learn all aspects of their problem. Much time has had to be wasted teaching commissioners elementary facts about utilities. Attorneys and accountants have had to spend days explaining court decisions and the principles of cost accounting to well-meaning men who want to perform their duties properly but who do not have the background they should possess.<sup>7</sup> There are only two ways of

<sup>6</sup> "The opinion seems to be fairly unanimous that the frequency with which commissioners succeed each other affords one of the weakest points in the regulatory system. The normal tenure of a commissioner should be more like that of a judge on the bench." Cooke, *Public Utility Regulation*, p. 195.

<sup>7</sup> ". . . With comparatively few exceptions, commissioners have been appointed because of political consideration, with little regard to their suitability for the posi-

remedying this condition. One is to make sure that commissioners are fully equipped at the time they are appointed. The other is to keep them in the positions long enough for them to learn. Few states have made use of either alternative. Often no qualifications are prescribed for membership. The American tradition is opposed to long terms. Small wonder, then, that a large number of state utility commission members have not been fitted for their task.

Under these circumstances the long term is clearly indicated. Even ten years is not too long for a term. A long term with a good salary would tend to stop the unfortunate practice of utility commissioners leaving their positions to accept employment with utility corporations. Every device which the student of administration can think of ought to be resorted to in order to attract competent men to the commission and to keep them there.

These comments raise the question of whether the law should prescribe objective qualifications for membership. The members ought to understand utility problems, or they should have educational backgrounds that fit them to learn rapidly. The problems involved are those of law, accounting, and engineering. Should the law prescribe that members be proficient in one or another of these professions? <sup>8</sup> Those who understand utility problems best are already employed by utilities. But it could hardly be expected that such persons should be eligible generally to appointment on commissions.

In recognition of the problem, some states have imposed the re-

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tions. The same force has controlled to a very large extent also in the appointment of the principal executive officers, the legal staff, the secretaries, and often, also, the technical experts. In comparatively few cases have commissioners brought to their positions a background of training and experience which would aid in the administration of the office. Seldom have the newly appointed commissioners had any understanding of the problems with which they were confronted.

"In many cases the new commissioners have not even understood the fundamental character of public utilities as distinguished from general business corporations. They had no notion of the significance of fair rates and reasonable service. They knew nothing of the technical procedure in rate-making. They did not comprehend the rights of the companies or the duty of the public to the investors." Bauer, *Effective Regulation of Public Utilities*, p. 351.

<sup>8</sup> ". . . the Nevada law provides that one commissioner must be familiar with the operation of railroads; one with general knowledge of fares, tolls, charges, etc.; and the third member must be the state engineer.

"The Michigan law reads: 'One commissioner shall be an attorney experienced in the law relating to common carriers; the others shall have knowledge of traffic and transportation matters.'

"The Virginia law requires that at least one commissioner shall have the qualifications prescribed for judges of the supreme court of appeals. One commissioner in West Virginia must be a lawyer with at least ten years' experience, and in Wisconsin one commissioner must have a general knowledge of railroad laws." Mosher and Crawford, *Public Utility Regulation*, p. 58.

quirement of professional training. But this tends to lead to a curious and unfortunate result. The lawyer member expects his judgment to be conclusive on matters that fall within his field, while the other professionally trained members also do the same. This attitude tends to suppress the deliberative function of the commission as a whole, and often results in personal antagonisms that are very unwholesome. It is difficult to see how this difficulty can readily be eliminated, but even so, this is no argument for not having professionally trained men on the commission. But this fact is an argument against having the law written in such fashion that any one member can look upon himself as the lawyer member, or the accountant member, or the engineer member. In making appointments, the governor should be aware of the desirability of having such professional men on the commission, but even so, they should not be designated specifically.

Professional training is by no means indispensable. The commission can, and should, employ lawyers, accountants, and engineers. A poor lawyer with political ambitions, or an engineer who has been unsuccessful in private practice, would meet the specific qualification of professional competence, but he would be a much less desirable member of the commission than would be an intelligent layman who was willing to study his task. Therefore it seems undesirable to fix professional qualifications for membership on the commission. The governor should be free to select men without specific technical training, though doubtless some men having professional backgrounds would always be on the commission.

It has been assumed that the governor should appoint them, with the consent of the senate, but this practice is by no means generally followed in the states. Many states provide for popular election. This is a bad practice and is almost certain to result in great dissatisfaction on the part of the public and the utility corporations alike. Skillful politicians seek the position and are often elected because in their campaigning they have played upon public prejudice and misinformation. On the other hand, the utilities are tempted to promote the candidacy of men already deeply prejudiced in their favor. In at least one of the states it has come to pass that candidates for membership on a three-member commission openly campaign as representatives of the public or of the utilities. The situation has become so clearly recognized that no odium attaches to it. The public seems to realize that the utilities, in all fairness, ought to be represented, that one of the members should be known to be definitely against the utilities, and that the third member should be a sort of arbiter. The actual situation itself is not at all bad. The members recognize their

respective roles and compromise with each other fairly well. But of course the implications back of this situation are preposterous. There should be no question of members being for or against the utilities. They should all be for justice, fairness, good government, and the public interest.

The state of the public mind is such that the conflict of interests cannot be ignored. It would never be found that some members of a conservation commission were for conservation and some against it, or that some members of a board of health were for promoting public health and some were against it. But it seems to be almost inevitable that some members of a utility commission come to look upon themselves, or to be looked upon, as defenders of the utilities, and others as defenders of the public interest, pledged to work against the utilities. This is unfortunate, and it may come to pass even after men have been chosen who at the time of taking office were truly unprejudiced. Obviously it grows out of the fact that utility corporations feel they are not being fairly treated, and that public feeling against utilities is very widespread and deep.

Students of this problem generally assume that, in the struggle of opposing interests, the utilities have come out ahead. That is, many more utility commissioners appear to be favorably disposed to the utilities than are hostile to them. This does not necessarily indicate corruption or evil practices on the part of the utilities. Bad as many of the utility corporations have been, the industry has repeatedly been victimized by unscrupulous politicians and ignorant public officials. The corporations try to protect themselves by selecting commissioners who are favorable to their cause. They use their wealth and their influence to persuade such men to seek office and to get it. To a large extent they are successful.

A less defensible practice, and one that may be very subtle and unobtrusive, is to exert pressure upon men who are on the commission, in order to win their favor for a cause. They can, and do, employ able men when they retire from the commission, at salaries much higher than can be paid to commissioners.<sup>9</sup> Thus a member of a commission

<sup>9</sup> ". . . The ablest men, looking to a professional career, with its attendant ample emoluments, are continually drawn off from the state administrative boards, to be enrolled among the professional counsel of the public utility companies. State officials, if elected, being at best upon an uncertain tenure of office, could not but be aware that the door of advancement beyond the modest condition fixed by government employment is open only through subsequent employment of this sort. They are thus necessarily exposed to heavy temptation to be complaisant, if not subservient, not stoutly assertive of the interests of the general public. Different by no means from the conditions twenty years ago in railroading! No reason in the least to expect that the people will be satisfied in the end with any other outcome than the creation of power



may look forward to lucrative employment after he retires, provided he has impressed utility executives with his fitness for employment in their organizations. This pressure can be very subtle indeed, and does not at all necessarily involve overt acts. Utilities employ corporation lawyers, accountants, and engineers. Small wonder that utility executives have their eyes upon public utility commissioners as possible candidates for positions in their own organizations. And small wonder the commissioners privately speculate upon their own future employment. Not infrequently one sees the spectacle of utility commissioners listening to the arguments of utility executives who were their own predecessors in the office of utility commissioner, and who now hold permanent positions at salaries several times as large as those enjoyed by the commissioners themselves. With such prospects in view, commissioners may be swayed despite themselves. This consideration perhaps argues very cogently for the appointment of laymen to the commission. They could not look forward quite so hopefully to eventual employment by utility corporations.

It must be realized that the function of a utility commission is not developmental, but supervisory and quasi-judicial. It is not the business of the commission to develop, promote, and encourage utility services as other state administrative agencies develop a highway system or public welfare services or encourage agriculture and conservation. The outlook of the utility commission is wholly different. Its purpose is to interpret, to apply, and to enforce the laws applicable to utilities. Incidentally it should advise the legislature as to laws that should be enacted.

Many laws are self-executing in the sense that they apply to all the people of the state. People will obey the law when it is simple, clear, and understandable. It is not necessary for the state to maintain special administrative agencies to interpret it, to apply it to particular situations, or to enforce it. This is not so with respect to public utility legislation, however. It is not enough to write into the law that electric light companies shall charge reasonable rates, that railroads shall provide adequate safety devices, or that new bus lines may be put in operation only when there is need for them. The objectives of the law are clear enough. But what *is* reasonable, what devices *are* adequate, and when *does* need exist? Such laws cannot be self-executing because honest, law-abiding people will differ very widely in their opinions about these

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and prestige at the seat of the central government, commensurate with the forces which, as the fruit of the country's long experience with them, have themselves demonstrated that they must be brought under control." William Z. Ripley, *Main Street and Wall Street* (Boston: Houghton Mifflin Company, 1927), p. 341.

things. Hence the need for administrative agencies to study specific problems, to interpret these apparently simple words, and to apply them to particular cases. This is the task of a utility commission.

### REGULATION OF TRANSPORTATION

The problem first arose in connection with railroads. It was desired to prevent railroads from charging unreasonable rates, to prevent them from discriminating unreasonably among shippers, to compel them to maintain proper safety appliances, and to prevent them from engaging in practices detrimental to public interest. Seventy-five years ago the various states began to do this; they set up railroad commissions. The problem was soon recognized as a national one, and the United States itself set up the Interstate Commerce Commission to deal with railroads that crossed state lines. The state commissions still deal with railroads that operate within state borders, and it is necessary that they should.

The state commissions must see to it that rates are fair, that discriminatory practices are not engaged in, that the latest and best safety devices and appliances are being utilized, that enough men are provided on the train crews to operate them safely, that reasonable hours of labor prevail, and that operators are qualified for their work. With respect of all these matters—and many others—the federal commission long ago fixed reasonable standards. For the most part, state commissions need only apply similar standards to the railroads under their jurisdiction.

Another problem, one that has always existed but which has come to be a particularly difficult one since the advent of busses, trucks, and airplanes, is to see that railroads maintain adequate service on their lines. Many an unprofitable railroad line would have been abandoned long ago were it not for the fact that state laws require service to be maintained so long as there is a reasonable demand for it. Originally railroad companies were privileged to enjoy a monopoly of the traffic and had a right to condemn property in order to build lines. In view of this special privilege, companies cannot now be allowed to abandon services they set out to perform at a good profit, simply because business has somewhat declined. State commissions are therefore authorized to require that a certain minimum service be maintained so long as there is a reasonable demand whether or not the railroad companies want to do so. When the demand is no longer of reasonable proportions is a question for the commission to determine. The interstate

commerce commission exercises the same sort of jurisdiction over interstate lines, and has established standards for measuring reasonable demand for service which state commissions may very profitably follow.

The state commission would have a similar function to perform in connection with interurban electric lines. For the most part these operate wholly within the borders of a given state, and the jurisdiction of the state commission is complete. Companies are often unwilling to install new safety devices that are very expensive. Should they be compelled to do so? There is a point beyond which they should not be compelled to go. It is the duty of the state commission to pass on such problems. How many trains should be operated each day? To what points should they run? Ordinarily the company would be free to determine such a matter for itself, but the state commission is there to hear protests from communities that believe themselves not to be properly served. It is for the commission to pass judgment on such complaints. When do cars become so old and obsolete that it is unsafe to use them? Ordinarily a company could be relied upon to keep its equipment up to reasonable standards, but the commission is there to compel recalcitrant companies to do so, if compulsion is necessary. The commission cannot and should not undertake to assume all the responsibilities of business management or to fix schedules of service. Nevertheless it should always be alert to see that reasonable standards are maintained.

Precisely the same problems arise in connection with bus and truck lines. The federal commission undertakes to supervise the companies that operate across state lines, though it has not yet made much progress. Within the states a large number of bus and truck lines are in operation. These suddenly presented problems are still unsolved. The state utility commission should have power to deal with them in the same manner that the problems of railroads have been dealt with. Indeed, one valid complaint of the railroad companies has been that their chief competitors have not been subjected to the same sort of regulation that is applied to railroads. Though railroad companies have been required to introduce many safety devices at much expense, nevertheless almost any careless or incompetent person is permitted to thunder along the highway in a huge truck quite as great a menace to the public as is a railroad train. Busses may be allowed to overload, and they may be operated by unskilled drivers who carry passengers hither and yon as freely as any driver of a private car. Often the concerns that operate trucks and busses are irresponsible and in no posi-

tion to make good the damage they may do. Many operating companies resort to cutthroat rate making, and carry traffic which otherwise would go to the railroads and interurban lines.

Bus and truck traffic should be subjected to strict regulation. The machines themselves should be subjected to rigorous inspection. They should be properly equipped and in good condition. Though this is a greater problem than that of inspecting railroad rolling stock, nevertheless the state commission should be prepared to exercise the function. Lights, brakes, rearview mirrors, tires, and warning signals, are some of the items to be covered in the regulations. The size of the vehicle and its weight are also matters of importance. Men who drive them must have special licenses, calculated to guarantee their competence so far as possible. Companies must not be allowed to permit their drivers to be upon the road for too long periods at a stretch. The tired and sleepy driver is almost as great a menace as the drunken driver. It may be impossible to keep tired or sleepy or intoxicated drivers away from the steering wheels of private cars, but the state commission certainly should be given a chance to do its best to keep them off trucks and busses. Licenses to drive these vehicles should be revoked in accordance with strict regulations.

It is not likely that companies operating trucks and busses—public carriers—will be required to maintain an unprofitable service, as the railroads have been. Their case is slightly different. In the first place they do not enjoy a monopoly, and in the second place they have not exercised the privilege of eminent domain. Furthermore, communities are rarely so completely dependent upon any one truck or bus line as they frequently were upon a single railroad. The real problem has been of an opposite nature, namely, to prevent the inauguration of additional unneeded service.

The ease with which bus or truck service can be launched has raised this problem. Presumably, one man with one vehicle in his possession, but with no capital, can begin business. If everyone is free to do this, as he wills, then the business of responsible concerns may be so impaired, and the competition become so devastating, that even though services become multiplied, service will on the whole be bad. Public interest is best served by permitting only reliable companies to operate, and by preventing too many concerns from operating in the same area.

The problem has already been recognized, and many state commissions now have power to refuse to permit new concerns to inaugurate service, on the ground that doing so would not promote public convenience. The idea is sound, but the responsibility resting upon the

commission is great. Obviously the commission is in position to practice favoritism, and virtually to consolidate a monopoly for transportation companies already in operation. What are the considerations that would justify the inauguration of a new bus line between two cities? What action shall be taken in case an existing line proposes to increase its service in order to forestall the advent of a competitor? Satisfactory answers to these questions are not easy to discover. The opportunities for bribery and favoritism are apparent. The commission must be scrupulously honest and fair. It must make careful surveys and study the needs objectively. With the best of intentions, a commission is in danger of making wrong decisions. Nevertheless the problem must be faced. Students of transportation are learning how to measure traffic needs, and the commission should make use of the findings of these experts.

High standards of financial responsibility help to curb the tendency to overwork the field. Every carrier that offers to haul either passengers or freight should be able to convince the commission that it is able to indemnify for any damage it may cause. People are sometimes injured in bus accidents, the property of others is sometimes destroyed in transit, and only afterward is it revealed that the carrier is in no position to make good the damage. No company should be allowed to operate its vehicles upon the highways until it has satisfied the commission that it is amply prepared for such contingencies. Elaborate regulations concerning insurance must be imposed.

It is unnecessary for the commission to maintain patrolmen on the highway to exercise quasi-police functions. The regular state police, or highway patrolmen, should be familiar with the regulations of the commission and should enforce them as a matter of routine. On the other hand, the commission would maintain stations in the principal cities and towns, certain of which would be important terminals. To these stations all public carriers would be required to report periodically for purposes of inspection. Indeed, in some states terminal stations are maintained where freight carriers must report to show their papers, which indicate the character of the load, its value, its destination, the consignee and the consignor, and such other shipping data. Trucks are cleared much as ships are. The truck-driver's papers, presumptive evidence of his good character, simplify the work of highway police. Nevertheless the police should be alert to discover reckless truck and bus drivers, to detect violations of traffic regulations, and to report misconduct promptly.

The term "tramp steamer" is the somewhat disparaging appellation that has long been applied to ships upon the sea which are often

operated by their owners and which do not follow established routes or adhere to fixed schedules. They pick up whatever cargo circumstances may provide, and go to any ports where they expect to find business. Many of them are considered a nuisance, and often they are held in low esteem by the established lines. Frequently they meet only the minimum requirements of safety as fixed in maritime law, and those who man them are likely to be the least efficient in their profession. But they *must* come into port, since they cannot stay upon the high seas indefinitely. Wherever they call, they must report to port authorities. Thus they cannot escape scrutiny and are obliged to observe whatever regulations the government sees fit to impose.

The term "tramp truck" has not yet come into common use, and though the disparagement which the word implies may not be deserved, the casual, owner-operated truck is in much the same category as the tramp steamer. The truck, however, is infinitely harder to deal with than the steamer, and is a far greater menace. Enormous numbers of these vehicles are on the highways, the operators recognizing no further obligation to public authority than does the average driver of a passenger car. Trucks not subjected to inspection are often overloaded and driven by unskilled drivers. Farmers trucking livestock or produce to distant markets sometimes sit under their steering wheels, hours at a stretch, without helpers to relieve them.

Obviously these free-lance operators of trucks are as much of a menace to public safety as those who operate vehicles for commercial lines that are under strict supervision. To be sure they are subject to the ordinary motor vehicle laws and are liable to arrest and fine. But that is not enough. Operators of trucks exceeding a certain size and weight ought to be under the sort of supervision that has been discussed above. This problem has thus far been very inadequately dealt with. In some states highway patrolmen are equipped with portable scales. They overhaul suspicious looking loads and weigh them on the spot. In other states, roadside scale houses are installed for this purpose. Passing trucks are hailed at random and ordered in to be weighed and inspected. The driver of an overloaded truck may be required to discharge part of its cargo at once. He may be required to shift his load in order to distribute the weight more evenly. Long delays may ensue. Innocent truckmen are often held awaiting inspection, and this presently causes congestion of traffic. Sometimes this work is carried on by a unit of the highway department, occasionally by the utility commission, now and then by the state police, and often not at all. Elsewhere patrolmen content themselves with halting trucks in the cities and towns where scales are available. These haphazard

methods are useful, but they are a poor substitute for systematic inspection and supervision. Just how to bring the free-lance truck driver under adequate public control is a problem that lies in the future. State commissions should be working on it and should be prepared to inaugurate control systems whenever state legislatures will authorize them to do so. One general principle may be suggested however. Highway patrolling and police work should be done through a state police agency, not through highway departments and utility commissions.

In many states the laws are sufficiently adequate. The state department is authorized to require all truck operators to apply for permits to operate their trucks, and to impose certain obligations upon them with respect to making reports. But rarely does the department have a staff adequate to conduct the inspections and to exercise the supervision that is needed.

#### REGULATION OF LIGHT AND POWER COMPANIES

The other broad field in which the utility commission would have to function, the one which is the focus of most attention today, is that of regulating the light and power companies. So difficult is the task, and so unsatisfactory have been the attempts at regulation, that many students of the problem are convinced that there is no agreeable solution in sight. The basic problem can be stated very briefly, and so simple does it seem to a large proportion of the public that failure to cope with it effectively has been widely attributed to graft, corruption, and other forms of evil-doing. This widespread feeling has greatly complicated an already complex problem. The fundamental objective is to see to it that utility companies provide adequate service, of good quality, at rates that are reasonable. How easy this to state, how difficult to achieve.

There is no longer any serious challenge of the proposition that the government is justified in using its authority to achieve these ends. That battle was fought out years ago on many fronts. While there are still some irreconcilables left among the utility magnates and the conservative legalists, it is today a generally accepted idea that the government should supervise the utility companies with these purposes in view.

It is not so universally believed, however, that the state itself should perform the task through agencies of its own.<sup>10</sup> The munici-

<sup>10</sup> " . . . At the outset of State regulation the utilities were on the whole opposed to it, and generally challenged its constitutionality. Failing in that challenge they

palities undertook the responsibility in the early days, and there are those who think that the municipality should resume the major role it once played in this phase of administration. It is not intended here to discuss the merits of this proposal, but rather to proceed upon the assumption that a large proportion of the states will choose to regulate light and power companies through state administrative agencies.

Whether or not the department that regulates transportation should exercise supervision over the power companies is an open question. Each field may be large enough to justify separate agencies of administration, and the problems are sufficiently differentiated so that no impelling need exists for combining the two services. On the other hand, a properly organized department could very well exercise control in both areas. The latter alternative is presented in these pages.

It has been said that the basic problem of regulating the power companies is simple to state. Ultimately it resolves itself to a matter of fixing rates that are reasonable, since no utility company is likely to object to extending any quality of service that may be required, provided the company is permitted to charge rates which it considers adequate to cover the cost of the service. It must be realized that a utility company is often called upon to provide service which does not pay, in the sense that the company itself would not find it profitable to extend the service if left to its own devices. But one of the distinguishing characteristics of a public utility company is that it is not left to its own devices. Were it so, the company would provide service only where it could make a good profit. Large and sparsely populated sections of cities and towns, and rural areas quite generally, would get no service at all, because the company would not find it profitable to provide service in these areas at rates which the consumers could afford to pay. A dweller on the outskirts of a great city is not willing to pay several times as much for electricity, gas, or water, as those who live in more populous parts of the community. Yet it may cost the company several times as much to provide him with equivalent service. If such people are to get service, they will get it only if the company is compelled to provide it.

Here is a baffling problem for a utility commission—to compel companies to provide unprofitable service at reasonable rates. This is to depart from the ordinary standards that determine what a service is worth under the capitalistic system. In effect, the utility commis-

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became more and more reconciled to State regulation as the courts gradually built into it a body of law which protected the interests of the utilities." U. S. Federal Trade Commission, Senate Document 92, Part 73-A, Seventieth Congress, first session, *Summary Report of the Federal Trade Commission to the Senate of the United States, Holding and Operating Companies of Electric and Gas Utilities*, p. 6.



sion is called upon to declare that it is socially desirable that certain communities be provided with service which they need not pay for at rates that would be exacted under a free capitalistic system.

The exercise of judgment in such cases must be more or less arbitrary. Should a single possible customer living miles away from all other consumers be provided with gas, electricity, or water merely because he wants it? Certainly not. Doing that is carrying a good idea to absurd lengths. But a gradual change of factors causes the problem to be one of determining at just what point it does become reasonable, from a social point of view, to require by administrative order that people shall receive a service from a corporation for which they need not pay rates normally prevailing.

Utility commissions are constantly struggling with this problem. People open up shoe stores, meat markets and many other such enterprises only when they believe there is such a demand for their service as to make the business profitable. No one is required to maintain a business of this sort unless it can be done profitably. But the utility company is compelled to depart from the dictates of the profit system, and to provide its service on wholly arbitrary terms. The commission must decide what these conditions shall be, for once the dictates of the profit system have been dismissed, then no measure of what is fair remains except somebody's judgment as to what is socially desirable. This judgment the utility commission must exercise. Arbitrary, but none the less reasonable, standards are established. Under certain circumstances, when there are a certain number of potential customers within a given area and within a given distance of the source of supply, service must be rendered whether or not it is profitable.

Complicated variations of this problem constantly come before the utility commissions. The commissioners must listen to the arguments of those who want the accommodations, hear the contentions of those who do not wish to render them, and ultimately decide what is fair and reasonable. Now that gas, electric current, and even water are being carried far into the rural areas, this problem of determining the circumstances under which unprofitable service must be rendered will soon become more difficult than it has been. Utility commissions will be under greater pressure than they have been. The difficulties growing out of this situation are likely to be so great in the minds of many people that it will seem to them that public ownership is the only solution. Government performs a multitude of services because they are thought to be socially desirable, not because they pay in a capitalistic sense. Providing gas, electric current, and water may be looked

upon as just as socially desirable as providing police, fire, and public health protection, and so come to be regarded as something to be afforded irrespective of the demands of the profit motive. Meantime utility commissions will have to struggle with the baffling problem of trying to reconcile social needs with the capitalist system.

The problem of determining what is a fair and reasonable rate would remain, however, even though there were no question of the profitableness of the service. Thus, on the one hand, the utility company must be compelled to render service that is not profitable, and, on the other hand, be restrained from deriving all the profits that might be obtained from the service that *is* profitable. Both kinds of service must be provided at rates which somebody thinks are reasonable. That "somebody" is the utility commission.

If a utility corporation were free to charge all the traffic would bear, no one knows how high the rates might be nor how prodigious the profits. The cost of groceries and clothing is kept somewhere within reasonable bounds by the so-called free play of economic forces that accompany the competitive system. The element of monopoly enters utility service to such a great extent, however, that the economic forces which normally operate cannot be relied upon to keep rates and profits within reasonable bounds. Hence, government power, as a sort of artificial factor, must be invoked to restrict them. Most utility operators concede this point readily enough, but that does not help very much toward a solution of the problem of what is fair and reasonable. That is a problem for the commission to deal with.

In the minds of many people, this issue has been oversimplified. They think it should be easy to determine what would be a reasonable return on the money invested in the utility, and then to fix rates that would yield this return and no more. Thus the original investment theory has always had its adherents. It is relatively easy to determine how much was originally invested in the enterprise and to figure reasonable rates on this basis. But as years go on, more money is invested, profits are devoted to extensions of the business, and the financial structure of the corporation becomes so bewilderingly complicated that the simple theory of original investment loses its validity. Indeed, after many years have elapsed, the original investment even ceases to be the most important factor in the situation.

The cost of reproduction is another idea that is equally elusive. The theory is that it should be possible to estimate at any given time the amount of money it would take to reproduce the physical plant and equipment of any utility company, and thus to find a basis upon which rates can be determined. But such a basis would be a fluctuating

one, changing from year to year, because the costs of materials and labor vary. A large staff of accountants and engineers would be kept constantly busy trying to follow these fluctuations, guessing much of the time, and continually arriving at conclusions which equally honest and able men would challenge. This is the predicament in which most utility commissions find themselves today, since there is a continuous bickering about estimated costs and values for which there are no accepted standards.

It must be realized, too, that in the case of the utility, much of its value as a going concern lies in intangible factors based upon past earning power and future prospects. Great confusion enters at this point because past earning power and future prospects depend largely upon what rulings may be made in the future. To estimate values upon such factors is to go round in a circle. The rulings of the commission itself become a very important factor in determining values. Try as it will, the commission cannot view the problem objectively.

In desperation the commission tends to take refuge in playing a passive role. It sits as a judicial body, waiting for the utilities to present arguments for an increase in rates, and for municipalities or consumers to present arguments for keeping rates where they are, or for lowering them. Thus the commission becomes simply a quasi-judicial body.

Hearings take on the character of a judicial proceeding. Attorneys appear for both sides. Rules of procedure which are comparable to those applying in the courts are adopted, expert witnesses are introduced on opposing sides, arguments are heard at great length, and the commission finally makes its decision.

In such proceedings it is inevitable that the utilities should have a great advantage. Their lawyers, accountants, and engineers are the most skillful and able men available. Relatively much less competent talent is usually found on the other side.<sup>11</sup> Huge volumes of complicated evidence and testimony are presented. Arguments are difficult to follow. The figures presented by the accountants and engineers

<sup>11</sup> "The handicap under which the average city attorney operates during the trial of a rate case can be largely removed. At present he meets the skilled engineers, auditors and attorneys of the utility, with no weapons of his own. He is not a trained utility lawyer, he has no engineers and no auditors. He has no witnesses, skillfully to develop the public's interpretation of the evidence.

"Give him some. Turn over to him the engineers, the auditors hired by the State. Direct them to prepare their data *solely* from the standpoint of the public. Have a trained utility lawyer, alive to the public point of view, hired by the state to assist the city attorney. In other words, meet a skillful presentation on the part of the utility by an equally skilled presentation on the part of the public." Cooke, *Public Utility Regulation*, p. 207.

are confusing and often unintelligible to the laymen who sit in judgment. The case of the utilities is presented with every show of assurance and knowledge. The public's case is often presented in a much less competent and convincing way. Small wonder the utilities tend to win such battles.

Long delays occur. Expensive and prolonged surveys must be conducted by technical experts. Ultimately these surveys and appraisals must be paid for by the consumer. When, at last, a decision is once made by the commission, it is always possible for the utility company to transfer the battle to the regular courts and there challenge the ruling of the commission on the ground that to put it into effect would be to take property without due process of law. Then once again the whole controversy must be gone over. This is the case because the courts have consistently held that companies cannot be compelled to render service at a loss. Of course the rule is essentially just, but it has made a mockery of the power to fix rates that city councils and utility commissions supposedly had. The power to determine rates does not extend to the point of establishing them in such a way as to make it impossible for the company to derive a fair return.

Realization of this has a restraining influence upon commissions, as indeed it should have, but there is reason to believe that it prompts them to prefer to err in favor of the utilities rather than against them. It is bad for the reputation and the morale of a commission to have its rulings rejected by the courts.

#### IDEAL ROLE OF A COMMISSION

No doubt the most valuable service performed by the utility commission is that of functioning as a conciliation agency. Persuasion and friendly discussion may produce more desirable results than can be obtained by means of formal hearings and arbitrary orders. But such tactics are also dangerous in a sense. Their success depends upon personalities, and in this realm also the utilities often have the advantage. The men who represent them are likely to be men of strong character and compelling personality. They tend to win out in friendly discourse and informal negotiation, just as they do in the formal hearing.

Often utility commissioners are not wholly clear as to just what their role should be. Is the commission to be viewed primarily as a quasi-judicial body, or is it to be looked upon as an agency which should take active steps upon its own initiative to protect the public interest? <sup>12</sup>

<sup>12</sup> "A commission is an administrative body, exercising legislative functions. To assume that it is a judicial body is to start in the wrong direction. Of course, members

Should the commission be as impartial and unconcerned as a judge on the bench, or should it constantly be promoting the cause of the public as against possible abuses on the part of the utilities? Can it be judge and prosecutor as well? Should it take the initiative and investigate alleged abuses, and aggressively assume the responsibility for putting an end to the evil practices of the utilities? There are some who believe that it should do so, but the general practice has been quite the contrary.<sup>13</sup> The more comfortable role is that of judge.

To correct this tendency and to provide a public officer through which the public interest may be directly served, commissions are frequently authorized to employ an attorney and such assistants as may be necessary to do the sort of thing described above. This officer performs a task somewhat comparable to that of the public prosecutor, except that he conducts his prosecutions before judges who are his employers. This is not a satisfactory relationship. A commission that sits as a court should not have its own subordinates practicing before it. Nevertheless that is substantially what happens in many states. An alternative arrangement is to have a special attorney from the attorney general's office assigned to sustain the cause of the consumer in hearings before the commission. A somewhat unfortunate implication of this arrangement is that such an officer almost inevitably looks upon himself as a prosecutor. This he should not be. He should be a searcher after truth

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of the Commission should be fair and in that sense they should have a judicial temperament, so that their actions may not be warped, but Public Service Commissions are not judicial bodies in the sense that they sit to pass upon the questions of fact and law raised by contesting litigants. In many cases, there is only one party that appears, and it should be the duty of the Commission to see that a thorough investigation is made and the facts brought out regardless of the strength or weakness of any one party.

"Further, they should not wait for cases to be started, and should not assume that if a rate case is not brought to their attention there is no need for such a case. In other words, they should be on the lookout to do justice and to find out where justice is not being done, and on their own initiative to start proceedings." Cooke, *Public Utility Regulation*, p. 198.

<sup>13</sup> "In the administration of their functions the most serious shortcoming of the commissions is the tendency to adopt a judicial attitude. . . . There is an element of incompatibility between the administrative and judicial responsibilities of the public service commissions, as at present organized. If they cannot be satisfactorily harmonized they should be redistributed. Let the commission become frankly a judicial body, while the investigating and prosecuting duties are performed by some such official as the people's counsel; or again, let the commission assume the latter function and be supplemented by a utility or a commerce court, equipped with a staff that is competent to pass on the intricacies of public utility law. . . . If regulation is to be made effective a changed attitude on the part of the typical commission is mandatory. The original conception of the commission as an administrative agency representing the public must be reborn; it must permeate commission practice and procedure in all of its ramifications." Mosher and Crawford, *Public Utility Regulation*, p. 40.

and justice, but he should have the cause of the public always uppermost in his mind.

The duties of the utility commission so far as concerns light, power, and water companies have been discussed almost wholly in terms of controversy about rates. This has been perhaps misleading, since utility commissions do more than merely adjudicate disputes about rates. They also investigate business operations and prescribe methods of accounting. All security issues and such financial operations must be passed upon by the commission. To perform these functions properly requires much time and effort and the employment of assistants. Many commissions have the right to supervise and to dictate with respect to details of plant operation and office management. A justification for this is supposed to lie in the fact that utilities are not actuated by the motives that cause private concerns to keep down the costs of production. It is not particularly necessary that they be economical, for no matter what they spend in connection with management and operation, those sums can be passed on to the public in the form of higher rates, since the company is permitted to charge rates high enough to cover costs of production plus reasonable profit.

Here lies another troublesome problem for the commission, and one that is sadly neglected. The efficiency of private enterprise is often compared with the alleged inefficiency in government. Yet there is plenty of reason to believe that much inefficiency and wastefulness goes on in connection with the management of utility enterprises for the reason that it makes no great difference to the owner whether or not economy is practiced. If costs are reduced, rates are reduced, and the company gains nothing. If costs are increased, rates may be increased to cover them. Thus, practically every problem of utility regulation ends in that of fixing rates. Even ". . . the regulation of security issues for financial stability of the enterprise should be linked with the policy of rate regulation. The two things go together. The control of new securities is rather futile without prior adjustment of the existing securities to the authorized earning value of the properties, or the rate base. Moreover, comprehensive control of securities would serve as the most satisfactory means by which the basis of rate regulation could be definitely established and constantly maintained."<sup>14</sup>

It is clear that the position of the state public utility commission is in some respects more anomalous than that of any other state administrative agency. This accounts in large part for the failure of commissions to function in a wholly satisfactory way. They are quasi-legislative bodies when they perform their most important function—that of

<sup>14</sup> Bauer, *Effective Regulation of Public Utilities*, p. 23.

fixing rates. They are quasi-judicial bodies when they hear disputes and make rulings. They are obliged to function as detective, judge, jury, and prosecutor, under conditions that are inherently difficult under any circumstances, and which are rendered more so by strong political pressure. This being the case, it will not be surprising if attempts to cut the Gordian knot are more and more sought through the channels of public ownership and operation.

## CHAPTER XVII

### BUSINESS AND LABOR

FOLLOWING upon the chaotic banking conditions which existed before the Civil War, and after the enactment by Congress of the important national banking laws of 1863, it came to be the practice in each of the states to exercise an ever-growing measure of authoritative supervision over state banks within its own borders. State banks are those which are organized under state law; they are to be differentiated from national banks, which are organized under federal law and are subject to federal regulation. There have always been a great many more state banks than national, and thus to a considerable extent the business of banking has come within the jurisdiction of the states.

For a long time the business of banking was looked upon as a private enterprise in no essential way different from other private undertakings. A man could set himself up as a banker, and if people entrusted their funds to him he would proceed to operate a bank. Like everybody else, he was, of course, liable under the general laws of the state concerning fraud, embezzlement, and larceny. It is unnecessary to explain at this late day how unsatisfactory this state of affairs became. Banking gradually came to be looked upon as a form of enterprise affected with a public interest to a much greater extent than almost any other kind of business, and state after state proceeded to pass elaborate measures intended to govern the banking business and to eradicate the very serious abuses that had developed.

But it was not enough to pass laws. Special administrative officers had to be provided to interpret and apply the law and see that it was obeyed. For example, states provided for one or more bank inspectors, for banking commissioners, and for departments of banking. Later it became apparent that insurance companies also needed to be supervised. This duty was often placed upon the banking commissioners if the office of insurance commissioner had not been created. Building and loan associations came into being and conducted a business somewhat comparable to banking. Trust companies were organized to carry on one special aspect of the banking business. Stockbrokers opened their offices and offered their wares for sale. Gradually the states found it desirable to reach out and embrace all these activities



and others like them, for purposes of regulation. Sometimes the new duties were imposed upon the department of state or some other existing department, and at other times new and independent agencies of administration were set up to assume the task. So it came to pass that in many states the familiar evil of bad integration appeared, and as a result the main purposes of the regulatory laws failed of full achievement.

#### DEPARTMENT OF BUSINESS REGULATION

There is no single way to organize correctly the agencies of administration needed for carrying on all these services. In defiance of the principle of integration, separate and distinct offices or departments may carry on their duties in exemplary fashion, and no compelling need for reorganization may appear. Nevertheless the essential soundness of the principle is clear enough. It is desirable to bring together into one department those services which are so closely related to each other that unified control is certain to make for economy and increased efficiency in administration. There is no reason why a bank inspector, an insurance commissioner, a blue-sky law administrator, and a supervisor of real-estate dealers cannot function well, though each is independent and hardly knows the others exist. But much the same qualifications are needed for officers who would function in each of these capacities. In many instances they would be dealing with the very same business men. They would be concerned with keeping the same kind of statistical data and other records. Much overlapping of effort could be eliminated in the making of inspections and the preparation of reports if the services were co-ordinated.

Hence it is suggested that at least the services already mentioned might well be grouped together in one department to be known perhaps as the department of banking and insurance, since those two services would be the most important and distinctive ones with which the department would be concerned.

#### SINGLE COMMISSIONER VERSUS PLURAL AGENCY

The question promptly arises as to whether the department should be headed by a single officer or by a plural agency such as a board or a commission. What is needed is a competent administrator, familiar with the businesses that are to be supervised. Furthermore, there would be few functions of a quasi-legislative or quasi-judicial character to be exercised. What is still more important, most of the rules

and regulations to be imposed would be of such character that they could and should be incorporated in legislation. These regulations would not need to be changed frequently, nor modified or expanded very much, in order to keep pace with changing conditions, as in the case of rules and regulations applied by many other departments. The legislature could and should enact comprehensive laws dealing with banks, insurance companies, and the other businesses involved. These laws would very likely stand unchanged for years at a time. It would be undesirable indeed to alter them frequently. The work of the department would be to enforce these laws. The rules and regulations formulated by the department itself would have to do largely with relatively unimportant details of procedure, and with the character of the reports to be filed by the institutions affected. There would be no occasion for a board to assemble periodically for the purpose of discussing policies or adjudicating disputes. The work would be almost wholly of a routine character.

For these reasons it is suggested that the department should be presided over by a single commissioner of banking and insurance. He could be appointed by the governor, with the consent of the senate, and hold his office for a six-year period. There is no reason why his term should correspond with that of the governor, for he should not be looked upon as a political officer whose political fortunes would need to be tied up with those of the chief executive. His duties would be of a ministerial character, presumably unaffected by political changes. It would not be a simple matter to fix the qualifications of this officer in the statute, and it should not be necessary to do so.

The department could readily be subdivided into appropriate bureaux, each in charge of a bureau chief who, having secured his appointment under the merit system, would hold his position so long as he was fitted to do so. Frequent changes in personnel would be most undesirable.

#### BUREAU OF BANKING

The bureau in charge of banking would exercise supervision over all banks and trust companies in the state. The law would prescribe in considerable detail the conditions under which banks might be organized and permitted to operate. Every state has long had laws of this character. They go into detail with respect to such matters as capital, surplus, reserves, and the nature of the business to be conducted. It is simply a ministerial task to enforce these requirements.

An important element of discretion enters if the department is permitted to refuse permission for new banks to be organized or to pass

judgment on matters pertaining to the investment of funds. A large proportion of the states permit any group of people to organize a new bank if they meet the requirements of the law. Other states allow the banking department to refuse permission to organize if it is believed the interests of the community concerned would not be served by the establishment of a new bank. This is a troublesome problem that involves the exercise of personal judgment. Ordinary business corporations may be organized regardless of the prospects for success. It is of no particular concern to the state if people want to organize a corporation and go into an ordinary business, provided they meet the requirements of the incorporation law. But there is much reason to believe that the interests of a community may be adversely affected if there are too many banks. Thus the banking department may have power to investigate a given situation and to rule that a proposed new bank shall not be allowed to organize, its only reason being that in the judgment of the department it is not desirable. This is an arbitrary power. Unfortunately the law cannot define the conditions under which a new bank is not needed. Decision must be based upon personal judgment. There are no satisfactory objective measures that can be applied. Nevertheless it is desirable that the state department have power to protect the community against the hazards involved. When there are too many restaurants or shoe stores in a community, the weaker ones fail, go out of business, and nobody except the proprietor is hurt very much if at all. But when there are too many banks in a community, and the weak one fails, the injury may be widespread and deep.

Single commissioners who have the power of refusing to permit the organization of new banks usually exercise such power with great caution, if at all. The reason for this is clear. To permit a new bank to be organized when it is not needed will rarely result in bringing down any difficulties upon the head of the commissioner. It could never be shown conclusively that his judgment had been bad, and he would be likely to escape criticism altogether. But to exercise his power in such a way as to refuse permission to a group of respectable people in a community who wish to organize a bank, and thus to set his judgment up against theirs, is to invite vigorous resistance and severe criticism of himself and his office. Such criticism is particularly difficult to face because the commissioner can only fall back upon his personal opinion that conditions do not justify the organization of a new bank. It is impossible to prove the correctness of the opinion, and objective evidence is likely to be both uncertain and unconvincing.

Nevertheless, the state department ought to have the power to prevent the organization of unnecessary banks. Since the exercise of

this function indicates a need for a plural agency, it may be suggested that an advisory board could serve a useful purpose in the bureau of banking. Composed of three or five persons appointed by the commissioner or the governor, such an advisory board could meet from time to time and function in a manner clearly suggested by the word "advisory." The board would advise the commissioner to grant or withhold permission to organize new banks.

Giving advice should never be confused with giving orders. A great deal of misunderstanding has developed in administration because of the anomalous role of so-called advisory boards. Either a board should have authority over an administrative officer, or it should not have. There is no satisfactory halfway arrangement. The simple function of giving advice, without authority, can be a very important one. Here is a case in point. If the board advised against granting a new charter, the administrative officer's position would be very greatly strengthened if he decided to act upon the board's advice. In case he decided not to follow the suggestion of the board, the full responsibility would be squarely centered upon him and he would have to assume all the risks involved. In such a relationship between administrative officer and advisory board, custom and precedent would tend to become highly important. Eventually the advisory board's judgment might come to be regarded as final and conclusive in every case. On the whole, this would probably be a good thing. In any event the board would exercise a wholesome restraining influence on the one hand, and would greatly strengthen the commissioner on the other. Thus its influence in this area of administration should all be highly advantageous.

Another delicate discretionary function often vested in state banking departments is that of passing judgment upon the character of loans and investments made by the banks under their supervision. The law may be very clear and uncompromising on this point. If such is the case, there is little for the department to do but to make investigations and see that the law is obeyed. But it may be said that in so far as the law is clear and unmistakable it is likely to cramp banks notably or unnecessarily limit their freedom. If the law is very liberal, however, and if the department has no power to pass upon such matters, freedom may be abused. Here again a proper role for an advisory board is indicated. Let the law be fairly liberal, but let the department have power to approve or disapprove investment policies in the light of the advisory board's advice. It is possible, of course, that a self-willed commissioner might systematically ignore the advice of the board, but that seems hardly likely. It would not be wise to give

the board conclusive power in such matters unless the board were in full control of the department, since doing that would mean divided authority, always bad in administration. The idea should be to center responsibility in the commissioner, but to have the advisory board there as a wholesome influence in the exercise of certain important discretionary powers.

Most of the work of the department would be of such routine character that there would be no need for a board. Banks would be called upon to file with the department whatever reports might be required. A staff of competent bank inspectors would systematically visit the banks of the state to see that all regulations were being obeyed. What matters these regulations would cover would be determined by the banking laws of the state, and those would not often be changed.

There is no uniformity of practice among the states with respect to dealing with closed banks. Naturally, one of the most important functions of any banking department is to order a bank closed when evidence indicates that it is no longer solvent. But that is not the chief problem. A more important problem is: Under whose direction shall closed banks be liquidated? When a voluntary liquidation is proposed by the officers of the bank themselves, this can readily be accomplished by them under regulations of the department governing such action. But when a bank has been closed by order of the department, a receiver must be appointed who in some instances will be in charge of the business of liquidation for many years. In some states the banking department has full charge of the process of liquidation, and thus, in effect, the banking commissioner automatically becomes receiver for all closed banks. In other states the local court appoints a receiver who is responsible to the court rather than to the banking department.

This latter practice has disclosed some serious weaknesses. Judges have frequently not made wise appointments. Besides, they often have neither the time, the ability, nor the inclination to exercise that supervision over receivers to which they ought to be subjected. At best the judge can take on this responsibility only as a side issue in no way related to his main duty. There is no reason to assume that because a man is a good lawyer and a good judge, he is fitted for the task of supervising the liquidation of banks. Too often this is not the case. The fact should also be appreciated that power to appoint receivers for banks involves political patronage which judges ought not to enjoy. A great many deplorable scandals have developed in this connection. Most important of all is the fact that liquidation of a bank is a function administrative rather than judicial in character. It should be done

through the administrative branch of the government, not through the judiciary.

Clearly, then, one of the functions of a bureau of banking in the state department should be that of liquidating closed banks. The department should appoint receivers and exercise strict supervision over them. Necessary legal advice should be afforded through the attorney general's office or by special counsel responsible to him. Proper reports, of course, would need to be filed with the court, but, even so, the court is not a proper agency to exercise this administrative function.

### BUREAU OF INSURANCE

Another important function of the banking and insurance department would be that of exercising supervision over all the insurance companies operating within the state. This could be handled through a bureau of insurance. With respect to the problem of insurance the states have little or no help or guidance from the federal government. It has been observed that federal aid to conservation, public welfare, highway administration, and the promotion of agriculture, has afforded the federal government an opportunity to offer guidance, to render material help, and even to exert some authoritative control over what the states do. So far as concerns the regulation of transportation and banks, the practices of the federal government provide an excellent guide, though the government neither controls nor gives aid. The states deal independently with insurance companies. This may not always be the case for the time may come when the federal government will find it possible and desirable to regulate the insurance business. Meantime, however, the states must do the regulating.

During the latter half of the nineteenth century the insurance business grew tremendously and all manner of shocking abuses developed. Many of these abuses were not to be attributed to evil intentions on the part of those who launched the companies. Frequently their only sin was ignorance, and in the early days ignorance was no sin because adequate information was not available. Nobody knew what rates would have to be charged in order to fund a given type of policy. The result was that a large number of insurance companies went into business more or less blindly and in due time the inexorable laws of statistics brought them low. They failed merely because they had promised in their policies to do something that could not possibly be done. Added to this, a great deal of corruption and mismanagement ap-

peared in connection with the operation of insurance companies because of lack of effective legislation.

The result was a widespread, deep, and popular resentment against insurance companies. Since they were organized under state law, and since it appeared that the federal government had no power to regulate this business, it was incumbent upon the states individually to do something about it. So far as constitutional law is concerned, the states were entirely competent to deal with the problem. An insurance company organized under the laws of one state can do business in another state only with the consent of the other. Thus there were at least three angles of approach: (1) states could enact stringent laws under which insurance companies could be organized; (2) they could set up administrative agencies to exercise authoritative supervision over companies organized within the state; (3) each state could determine the conditions under which companies organized in other states could do business within its own borders. This last point finally had to be threshed out in the federal courts, but in the end no doubt was left. It was a very important matter, for otherwise an insurance company could be organized in a state where the laws were very inadequate and lenient, and then proceed to do business in every state in the Union. Fortunately it was held that each state might determine for itself the conditions under which the insurance business might be carried on within its jurisdiction.

Here was abundant power, so the states began to exercise it. Strict laws were enacted concerning the organization of insurance companies, and since most companies would want to do business in many states, there was no great incentive for the states to enact so-called easy incorporation laws. A company would find no great advantage in organizing under the easy laws of one state if it could not do business in other states. Consequently, with eastern states like New York and Massachusetts taking the lead, good laws concerning the incorporation of insurance companies came to be enacted in most of the other states.<sup>1</sup> There was, of course, much copying of laws. The newer states

<sup>1</sup> " . . . At present, most of the large companies doing business of national scope are chartered in the northeastern states and operate in other states by grace of the local authorities. Consequently, when Alabama, for example, passes a law adverse to the interests of companies chartered in New York, the New York authorities may retaliate, but without equal effect because there are few Alabama companies doing business in New York to be affected.

"As a result, the great national insurance companies, chartered in the northeastern states, have the perplexing and expensive problem of attempting to comply with as many as fifty-two sets of conflicting state and territorial laws, against which their home states cannot effectively protect them by the use of retaliatory legislation. Ac-

tended to copy the laws of the eastern states. This was fortunate. Uniformity in this matter is quite desirable, and there is no need for extensive experimentation here, as there is in some other matters.

Progress in the matter of setting up administrative agencies to supervise insurance companies was not so rapid, nor did it need to be. A very large proportion of the companies were organized in only a few states, and if those states exercised effective supervision, then other states would be protected also. If other states neglected to exercise supervision, however, there would be some tendency for companies to organize within their borders in order to escape supervision. So it has come to pass that supervision over the insurance business is practiced now by all the states.

As a rule, an independent insurance commissioner is either popularly elected or appointed by the governor. Nothing further need be said about the indefensible practice of popular election of such an official. However, whether or not the insurance department should be separate from all other administrative agencies is a moot question. It cannot be denied, and there is no disposition to deny, that many of the separate, independent departments have functioned in a thoroughly admirable way. But in view of what has been said about the desirability of integration, it may be urged that the function of supervising insurance companies may well be merged with that of supervising banks. The same sort of skills and abilities are required in each area. Reports to be received and examined are of the same general character. The inspectional work would be of much the same type, and the important task of supervising investments would be exactly the same. There would seem to be no good reason why the insurance commissioner should not be a bureau chief in the department of banking and insurance, appointed by and responsible to the head of that department.

The bureau would be concerned with passing upon applications for the incorporation of insurance companies under the laws of the state. It would also pass upon the applications of companies organized elsewhere that ask permission to do business in the state. In this connection it would be necessary to see that the laws of the state in which the company was organized at least measure up to certain minimum standards fixed by the laws of the state where permission to operate was desired. The bureau would have little discretion in this mat-

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cording to some representatives of the companies, this problem is somewhat simplified by the very magnitude of the insurance law in the several jurisdictions where they operate. The insurance laws, they declare, seldom are well understood by insurance commissioners and superintendents who are, for the most part, short-term political appointees." Keezer and May, *The Public Control of Business*, pp. 217, 218.



ter.<sup>2</sup> It would merely be a question of examining the law. The applicant would have a legal right to do business if the provisions of the law were satisfied.

In accordance with law, the bureau would establish rules and regulations concerning methods of doing business, and these both the domestic and foreign companies would be required to obey. Various standard policy forms are prescribed, and for the most part there is a sufficient degree of uniformity among the states to make it a relatively simple matter for the companies to conform to the requirements of states in which they wish to do business. Some states are more particular than others about the publicity and advertising material which may be used in soliciting insurance business. It seems to be peculiarly easy to be misleading about the essential character of insurance contracts. Statements which may be perfectly true may nevertheless be so designed as to mislead the prospective customer and keep him in the dark as to important features of the policy he contemplates buying. So easy has it been to impose upon the public in this way, and so often has it been done, that now it is thought proper for the state office to scrutinize all printed material used for purposes of advertising with a view to forbidding the use of publicity matter that is deliberately delusive or deceitfully inadequate.

In addition to this, some states go still further and authorize the department to exercise a sort of censorship over the verbal solicitations of insurance agents. Thus the department will entertain complaints from persons who believe they were maliciously deceived or misled by agents of insurance companies, and it may deny the corporation the right to continue to do business in the state. Such powers, if rightly used, certainly make for more honest business dealings, but the responsibility is a grave one. The power must be used with caution and restraint because it is an instrument of control that can be used with devastating effect. Of course, any company that believed itself to have been unfairly attacked could appeal to the courts to restore its license to do business.

Reports are called for from insurance companies organized within

<sup>2</sup> An eminent authority argues for a larger measure of discretion than is now generally permitted: ". . . I am not adverse to granting a supervising official a reasonable amount of discretionary power. Such power is essential to the progress of the business, as legislation cannot keep pace with changing conditions in the business. The chief argument against granting a supervising official of insurance discretionary power is that such power might be abused. This is undeniable. However, such an official can, if he is inimical to the insurance interests, cause as much trouble without the aid of discretionary power as with it." Thomas F. Tarbell, *Legal Requirements and State Supervision of Fire Insurance* (New York: Insurance Society of New York, 1927), p. 11.

the state which are intended to show the financial condition of the company.<sup>3</sup> In case this is not satisfactory, the license to do business may be revoked. Before such action could be taken, however, the case should be submitted to an advisory board for its opinion. The board that functions in cases involving banks could properly be used for this purpose, because precisely the same kind of problems would arise.

Certain states have bestowed upon their insurance departments the function of enforcing the state fire laws. There is, of course, a reason for doing this. Fire-insurance companies are much interested in the fire laws, fire hazards, and incendiarism. It is to be supposed that a state insurance department would be much concerned with all this, and so it would be a suitable agency to have charge of such matters. In most states, however, there has been a state fire marshal, or other such officer, who has been quite independent of the insurance department and has been directly responsible for enforcing the fire laws.

This arrangement has not been wholly satisfactory. It has usually been utterly impossible for the fire marshal's office to do more than the merest fraction of the work clearly implied in his function. He has had a few inspectors who go about the state investigating conditions as well as they could, ordering the removal of fire hazards here and there, and bidding the owners of buildings to install fire escapes, to provide adequate exits, and to introduce such safety devices as the law may require. Rarely are there enough inspectors to do this work with the thoroughness with which it ought to be done. Not only do thorough inspections need to be made, but there also needs to be a systematic follow-up. Owners and occupants of buildings are likely to be negligent and careless. They may not resent orders to remove fire hazards, but they are apt to be very negligent about removal. Systematic re-inspections are necessary, and people must learn that orders must be obeyed and that penalties will be applied if they are not.

City departments are concerned quite generally with this matter, and may be relied upon to co-operate with the representatives of a state department, though they at all times need the support of an energetic state office. It is possible for an adequately financed state

<sup>3</sup> "The periodical examination of insurance companies is without question one of the most important functions performed by an insurance department and large staffs are maintained for this purpose. The primary object of such an examination is to determine a company's financial condition and whether or not its Underwriting and Investment operations are so conducted as to insure its continued solvency. The ability of a company to carry out its contracts with its policyholders is, as previously mentioned, of foremost importance. The secondary object, or rather objects, consist of determining if the company is complying with the laws to which it is subject, and is so conducting its business and affairs as to deal equitably with both policyholders and stockholders." *Op. cit.*, p. 11.

fire marshal's office to do this work in a satisfactory way. It is also possible to have it done well through a department of insurance. But the function is primarily one of a police character. It belongs very properly in a police department, and if there is a state department of police it should include a bureau concerned with enforcing the state fire laws. Inspectors working out of such a bureau would co-operate effectively with the state police patrolmen. The insurance department should be concerned with the business aspects of fire insurance, and officered by people trained and experienced in the insurance business. It is rather incongruous to thrust police functions into such an office. It is better to let it be a business office, undistracted by responsibility for exercising a quasi-police function. The problem is somewhat similar to the one discussed in dealing with the highway department. The highway department, being an engineering agency, should not have police duties. The insurance department, being a business office, also should not have police functions. In the interest of good integration, police work should be centered as far as possible in the department primarily concerned with police work.

#### OTHER BUREAUS

Another bureau in the department of banking and insurance ought to be responsible for enforcing the blue-sky laws.<sup>4</sup> This matter was briefly discussed under the office of secretary of state. Every state should have laws designed to prevent the sale of fraudulent securities. If the work of examining securities is to be done thoroughly, if the financial circumstances of concerns which wish to float securities are to be investigated carefully, and if publicity material is to be scrutinized with care, a large well-equipped office must be maintained to do these things. Such an agency very properly belongs in this department. Sample copies of all securities to be offered for sale, together with copies of all publicity material, would be filed here. It would be the duty of the office to call for supplementary data and information in case these seemed necessary.

It would be no duty of the state office to attempt to suppress busi-

<sup>4</sup> "The elimination of fraudulent securities from the field of American finance is the dominant purpose of blue sky laws and their administration . . . it may be said that the states have succeeded in considerably diminishing this evil, so far as intrastate swindles are concerned. The attainment of this goal has been hindered by official laxness and political corruption; by inexperienced officials, statutory loopholes, 'compounding' and the difficulty of punishing criminals when discovered." Forrest Bee Ashby, *The Economic Effect of Blue Sky Laws* [Dissertation] (Philadelphia: The University of Pennsylvania, 1926), p. 55.

ness ventures that might seem to be unwise and destined to failure. It would be the duty of the office to see that prospective investors were given every opportunity to know the truth about the enterprise in which they might be planning to invest, and that they were protected against fraudulent misrepresentation.<sup>5</sup> This is a large undertaking. If it is to be done well, the services of capable and experienced men are required in the state office. Inadequate administration in this field can easily develop without detection, while incompetent administration in other areas is likely to leave some obvious telltale signs. That is, the office may degenerate into nothing more than a filing establishment. All the data requested may be received at the office and very efficiently filed by competent clerks who keep their records in up-to-date fashion. The office gives every outward appearance of businesslike efficiency. Indeed, relatively incompetent people in such a place can do the routine work in an efficient and expeditious way. But the real purpose is defeated unless some very competent and determined chief goes into a detailed study of the material that is put in his hands, and takes aggressive action when necessary. To do nothing but file documents and handle routine correspondence is to follow the line of least resistance.

One reason why this sort of concealed inefficiency is likely to develop in many states is that new people are continually being appointed to the office in charge. It is natural for the inexperienced incumbent of the office to move cautiously. Indeed he should. But there should be no frequent turnover in this office. The chief of this bureau should be on relatively permanent tenure. Through the years he would acquire experience and confidence and sound knowledge. These things would make for real efficiency and not merely for superficial efficiency.<sup>6</sup>

<sup>5</sup> “. . . blue sky laws are divided into two main types, fraud acts and regulatory acts. Fraud acts seek to prevent fraud by punishing swindlers and thus frightening away other potential criminals. Regulatory acts, on the other hand, seek to prevent fraud before its commission by supervising either sellers of securities or the securities themselves. Regulatory acts primarily controlling vendors are called ‘dealer-licensing’ laws, under which professional dealers are granted annual licenses and afterwards sell freely during good behavior. So far as individual issuers of securities are concerned, dealer-licensing acts require them to obtain specific permits to sell their single issues. As contrasted with dealer-licensing acts, other regulatory acts seek to control the securities traffic by supervising each specific issue. These latter acts are the ‘specific-approval’ statutes.” *Op. cit.*, p. 18.

<sup>6</sup> “The prevalent unfamiliarity of commissions and more especially of prosecuting attorneys of the states with securities acts and their rights and duties thereunder is a serious burden upon the effective administration of blue sky laws. The frequent changes which take place in administrators result in the removal from office of commissioners who have really learned their business and have become expert in the administration of the law, and the filling of the positions with inexperienced men, to

Real-estate operators and brokers might be supervised through a bureau in the department of banking and insurance. This too is a function that can easily degenerate into little more than a routine task of filing documents and answering letters. Genuine supervision in accordance with the purpose of the law requiring it would call for the services of an energetic and experienced man as bureau chief, who would feel himself responsible to a department head who would expect effective work.

It is coming to be recognized that there are some other lines of business of the same general character as those already mentioned in this chapter that might well come under the supervision of some state administrative agency. Suitable bureaus in the department of banking and insurance could assume these responsibilities. Building and loan associations need to be subjected to supervision. So-called credit associations, engaged in lending money, are in the same category. Brokers who are in the business of selling securities, but who have nothing to do with issuing them or with the management of the businesses which they represent, should be supervised. This is particularly true of dealers who sell securities on the installment plan.<sup>7</sup> Since doing this involves the accumulation of other people's money, such operators should be subjected to as rigorous supervision as are banks.

Pawnbrokers and small loan companies need to be subjected to supervision. The latter are specially apt to indulge in bad practices unless closely supervised. Pawnbroking is an ancient business, but the small loan company is a relatively new institution. Due to the fact that these concerns seek business in an aggressive but rather subtle way, and because they sometimes prey upon gullible and ignorant people of small means who need much protection, it is essential for the state to see to it that exorbitant rates of interest are not charged and that ethical standards are observed both in seeking clients and in

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the great injury of the legitimate interests whose business activities are hindered, and also to the detriment of the enforcement of the laws against fraud. This is the penalty which the administration of securities acts suffers under the conditions of shifting official personnel so common in our form of government." *Op. cit.*, pp. 43, 44.

<sup>7</sup> "The use of the partial payment or installment plan in connection with the sale of corporate securities has been rapidly increasing, and is now widely used by financially responsible investment houses as well as by those of less repute. Money received as payments on account under such subscription or installment plans is, in a sense, a trust fund belonging to the purchaser, and it ought to be so treated and given protection equal to that usually given a trust fund. Because of its immaturity, the installment payment business is hardly ready for the same supervision and regulation as the business of banking, but some method must be provided to protect the funds which thus accumulate in the hands of sellers of securities, and to prevent the losses which are due to bucketing and the failure of financially weak dealers and issuers selling under partial payment plans." *Op. cit.*, p. 49.

making collections. Collection agencies, too, need to be subjected to the same kind of supervision. Otherwise practices closely akin to blackmail are likely to be resorted to, and unhappy victims find themselves in the toils of rascals who exploit them shamefully. An alert state office can bring this to an end.

Most states now have systems for certifying public accountants. There are state boards of accountancy which examine candidates before certifying them to practice this profession. This work could be handled through the department of banking and insurance in co-operation with the bureau of personnel administration.

A further responsibility of this department should be that of administering the general incorporation laws. Corporation charters are granted to groups of private persons, who wish to incorporate, for a great variety of purposes. Most of these corporations, but by no means all of them, exist with the intention of carrying on business activities. The laws of the state provide for various kinds of corporations. Those who apply for charters need only meet certain legal requirements. Charters are granted as a matter of right if the legal requirements are met. A bureau in the department under discussion could have the responsibility of scrutinizing the applications for incorporation and then issuing the charters.<sup>8</sup>

To set up separate agencies for these various purposes is a great mistake. They can all be handled properly in one well-organized department in charge of a competent commissioner. All the people employed in the department would have secured their positions through the merit system administered by the bureau of personnel administration. This should make for the development of consistent, well-considered policies and for methods that should inspire confidence and respect on the part of those business men who would be subjected to supervision.

<sup>8</sup> "The mechanical or routine work of the Department in issuing the charter and keeping its records of corporations is really the least of its important work. Articles of agreement or incorporation are carefully examined to determine before a charter is issued that all provisions of the laws have been fully met, and that they contain no provision not authorized by statute. Many corporations, after receiving their charters, find it necessary to increase or diminish their capital stock, or the number of shares, or to change their corporate name, or the number of directors or even extend their corporate powers and purposes. To do so, it is necessary to call meetings of their shareholders, adopt resolutions and file all amendments with the Department. The statutes and laws must be carefully examined and amendments carefully scrutinized for the protection of the shareholders and the public at large who have dealings with the corporation. The Department maintains a well equipped law library for this purpose." Secretary of State of Missouri, *Official Manual: 1933-1934* (Jefferson City: Midland Printing Company, 1936), pp. 810, 811.

## DEPARTMENT OF LABOR

One group of administrative services is usually thought of as being primarily associated with the interests of labor. Certain of them obviously belong in a department of labor if the state has such a department; others might be located in other departments or be handled through independent administrative agencies. Laws covering industrial accidents, an employer's liability statute, or a workmen's compensation law, ought properly to be administered through a department of labor. It might be done through a bureau in a department embracing public utilities and transportation, or the work might be done through a department concerned with business regulation as well as with labor. If a state maintains administrative agencies intended to facilitate the settlement of industrial disputes by means of conciliation or arbitration, such a service properly belongs in a department of labor. Obviously, if a state chooses to maintain some sort of employment agency, or to supervise private employment agencies, such a service belongs in a department of labor.

So-called factory laws should be administered through a department of labor. The duty of enforcing a building code does not so obviously belong there, but certainly there is no good reason why it should not be placed in this department. Some states have separate and distinct administrative agencies for inspecting steam boilers and elevators. Other agencies, perhaps located in the department of state, compile labor and industrial statistics. Still others may be charged with the duty of inspecting tenement houses, theaters, or hotels, with a view to seeing that minimum standards of safety and decent living are maintained.

## THE LABOR COMMISSIONER

There is no need for this scatteration of administrative agencies. Even though some of these services are not clearly related to the interests of labor, nevertheless they are of such character that it is altogether appropriate to group them in one agency in the interests of integration. These services are primarily of a ministerial character since they demand only the exercise of a minimum of discretion. In other words, this department would have little to do with determining policy. The legislature could and should do that. The department would be concerned almost entirely with interpreting and applying detailed laws. Hence this department would not need to be organized as is a department of agriculture or a department of public works.

There would be no need for a board to exercise quasi-legislative or policy-determining functions. The department could be in charge of a single commissioner, appointed by the governor with the consent of the senate, for a relatively long term. It would be quite unwise to attempt to fix in the statute any specific requirements as to eligibility for the position.

#### BUREAU OF INDUSTRIAL ACCIDENTS

One of the bureaus in the department would be concerned with administering the employer's liability statutes covering industrial accidents. These laws, much alike in the various states, differ only in detail. They were an outgrowth of the inadequacies of the old common law concerning the rights and liabilities of employers and employees. In the old days, whenever an employee suffered accident or injury, in order to recover any damages he had to prove that it was the fault of his employer. This was very difficult to do under any circumstances. Whenever the plaintiff was successful, he was likely to recover exorbitant damages. The situation was such as to induce employers to resort to every legal device in order to disclaim all responsibility. On the other hand, the injured employee was prompted to use every recourse to recover the heaviest damages he could possibly get. In these desperate legal battles, employers generally won and injured workmen got nothing. The principal defenses set up by employers were that the employee had assumed the risks of his employment when he took his job, and thus the employers were in no way liable; or that the employee had contributed to his own injury by his own carelessness; or that some third person had contributed to the accident. All these contentions were designed to absolve the employer.

The results of litigation over these questions were recognized as deplorable by the better class of employers as well as by laboring people, and by all people who were interested in social well-being. The path of industry was strewn with tragic wrecks of men who might have been saved if they could have been moderately reimbursed for the injuries they had suffered. It was necessary to dispense with efforts to fix responsibility, and it was imperative that accidents be regarded as accidents without attempting to fix blame for them, unless, indeed, criminal negligence had been involved. The new conception was that men injured while at work should receive moderate benefits as a matter of right, and that employers should carry insurance adequate to meet these risks, just as realty owners carry fire insurance. Thus workmen could be sure of moderate benefits and employers would escape having to pay exorbitant damages.



It required many years of experience to discover how much such insurance should cost, and how much should be paid to those injured. But the period of experimentation is now fairly well over, and there is no longer any doubt that the approach to the problem is thoroughly sound and equitable. It has remained only for the states to enact good laws in the light of this experience and to set up suitable agencies of administration.

The scope of the law needs to be made clear. This is not a matter for an administrative department to decide. The legislature should determine what categories of employees are to be included or excluded. The benefits to be enjoyed should be made clear in the law also. Different types of injuries carry different rates of benefit. The administrative function is to determine the character of the injury, and in a vast majority of cases this would be evident.

Nevertheless, it is clear that there would often be need for the exercise of a quasi-judicial function. Cases would arise that were not perfectly clear. Somebody would have to decide conclusively as to the character of the injury suffered, and thus the rate of benefit to be enjoyed. A special board could perform this quasi-judicial function, and there ought to be such a board in the department of labor. It could be very small, appointed by the governor, compensated on a *per diem* basis. This board would not have jurisdiction over anybody. Nobody would be responsible to it. It would be much like a court: called in session when needed to render judgment in special cases.<sup>9</sup> The right to appeal to the board would of course be guaranteed to both employer and employee. The responsibility of the department would be merely to see that the terms of the law were obeyed. Of course one duty of the bureau would be to keep on file a complete record of all cases that might arise under the law.

<sup>9</sup> The actual hearing should be conducted before a small board that would not be controlled by the administrative officer. On the other hand, the board should have no control over *him*. The two functions should be definitely separated. The following quotation indicates a proper function for the administrative officer, not for the board which exercises the quasi-judicial function: ". . . The commissioner or referee who conducts the hearing should not merely control the proceedings but himself examine the witnesses, with or without the intervention of counsel. Above all, the administrative authority should be equipped to go out and find the facts, initiate proceedings of its own motion, make field investigations when necessary and decide disputable questions upon the testimony of impartial experts. The occurrence of an injury in the course of employment, the relationship of employer and employee, the status of dependents and the wages of the injured are facts easy of ascertainment and seldom controverted." E. H. Downey, *Workmen's Compensation* (New York: 1924), p. 71. (By permission of The Macmillan Company, publishers.)

## EMPLOYMENT BUREAU

Another bureau in the department of labor would have the duty of maintaining free employment offices and exercising a measure of supervision over private employment agencies. If private employment agencies are not subjected to rigorous supervision, there is grave danger of serious abuses being practiced. A peculiarly vicious form of collusion may develop in which workmen are put in touch with jobs that turn out to be temporary and were never intended to be anything else. The workman pays his fee for a job he considers bona fide. The job soon disappears and once more he becomes a potential client and victim of the unscrupulous employment agency. Strict supervision on the part of a state office can keep such abuses at a minimum.

It is possible for the states to co-operate with the federal government in maintaining free employment agencies. Many states do so. But the problem involved here is destined to take on a new significance and a vastly greater importance since the enactment of the federal social security act. No doubt one effect of this measure will be to induce every state to provide for unemployment insurance. The federal government itself will not undertake to administer unemployment insurance, but it is intended that every state shall do so. The idea is that employers and employees, or employers alone, shall be taxed in order to raise funds out of which it will be possible to pay benefits to workmen who are unemployed. These benefits will necessarily be small, and will be paid only for a few weeks. Nevertheless, it is believed that the results will be salutary. Enormous numbers of workmen are able to save little or nothing out of their wages. Being out of work merely for a few weeks may be disastrous for such persons. Unemployment insurance benefits are intended to tide workers over these few weeks while they are seeking new employment.

The idea is excellent but the execution of it will involve many problems. While there is likely to be considerable uniformity in the laws adopted by the various states, there is also sure to be much novel experimentation. It is altogether too early to speak confidently with regard to the best methods by which unemployment insurance can be administered. It is intended, however, that the administrative agency which has the matter in hand should be in position to assist the unemployed workman to get a new job, and even to put some compulsion upon him to take suitable work that is available. This responsibility may raise some difficult problems, especially if the laws are so written that benefits will not be paid if the workman refuses to take suitable employment when it is offered to him. But in any event it is clear that

some state department will be expected to have at hand in usable form statistical data with respect to jobs available throughout the state. This will be an enormous task if it is well done. It will be a much larger undertaking than has ever been attempted in connection with the maintenance of free employment agencies. Presumably each state will try to maintain a sort of clearinghouse for all kinds of available jobs.

It is altogether likely that many states will set up new and separate administrative agencies to handle unemployment insurance. But this would be a move in the wrong direction for reasons that have been pointed out in this book many times. Unemployment insurance can and should be administered through appropriate bureaus in properly organized state departments of labor.

#### FACTORY LAW ENFORCEMENT

During the last half century much progress has been made in bringing it to pass that workmen should be protected against undue hazards in their employment. With the development of complicated machinery, these hazards have greatly increased. If the old common-law rule had been allowed to prevail, it would still be assumed that when a workman accepts employment he voluntarily assumes the risks to life and limb that go with the job. To a certain extent that must always be true. Some tasks are inherently dangerous because it is impossible to remove all the hazards. But it is possible to do much that tends to mitigate and minimize these inherent dangers. There is always the possibility that someone may fall down an elevator shaft and be killed or hurt. It may be possible, however, to erect a protective railing that will greatly reduce such peril. Whirling flywheels are sure to be dangerous; but it is possible to build protective housings around them. Examples of this sort are endless.

The employer who is actuated by humane motives is disposed to introduce all the safety devices that are feasible in order to reduce hazards of employment in his establishment. But many of these protective arrangements are expensive and often they tend to retard operations. When there are two industrial concerns competing in the same market, it is possible that the cost of introducing safety devices will make just the difference between success and failure, humanitarian considerations notwithstanding. In other words, the well-intentioned employer may find it impossible to do what he knows ought to be done, unless his competitors are obliged to go to the same expense and do the same things.

This is the practical justification, in addition to the humanitarian one, for the many so-called factory laws that appear in the statutes of the various states. The objective has been to compel all employers to introduce and maintain reasonable safety devices in their establishments. It is plain, however, that the problem cannot possibly be dealt with simply by means of writing laws. No law could adequately cover all situations. It is necessary to use such words as "reasonable" and "adequate," and those words need to be interpreted and applied to specific situations. A wholly adequate safety device surrounding a piece of machinery might make it almost impossible for a workman to use the machine. What is reasonable in a given situation depends upon human judgment.

Some of the statutes are almost absurd in the extent to which they go in an effort to prescribe exactly the type of safety equipment that must be used. There are not a few examples of statutes which betray an ulterior purpose on the part of certain lawmakers to require that some particular device be installed which can be had from only one dealer, thus creating for him a virtual monopoly. Plainly the problem is clearly one that calls for intelligent and sensible administration. The legislature should not try to deal with specific cases. It should be content with stating the general objective, namely, that reasonable and adequate safety devices must be installed and maintained. It is quite feasible for the law to be specific about certain matters, such as open elevator shafts, and that it require them to be enclosed. But certainly there will be many situations that no law can possibly cover in precise terms. That is why an administrative agency is needed. The law is not and cannot be enough.

A bureau in the department of labor should have charge of this matter. There should be a staff of inspectors, numerous enough so that they could visit all industrial establishments in the state and all other places where dangerous machinery and equipment was being used, such as elevators and steam engines, for the purpose of seeing to it that reasonable and adequate precautions were being taken to keep accidents at a minimum. Owners are usually willing to abide by reasonable requirements if they are assured that everybody is being made to conform.

All the states make some pretense of at least doing this, but there is great variation in the thoroughness with which it is done. One may safely say that in most states the staff of inspectors is altogether too small to do the work thoroughly. In some states the work is scattered among several administrative agencies—one group of inspectors is

concerned with steam engines, another with lathes and overhead belting, another with threshing machines, and so on. Responsibility for all inspectional work of this sort should be centered in one bureau. Another serious weakness in the administration of such regulations lies in the fact that to a very large extent the inspectors are political appointees, and perhaps incompetent. If, in addition to being incompetent, they are corrupt and susceptible to bribery, the situation becomes intolerable. Owners may find themselves subjected to systematic extortion; they may be obliged to pay bribes in order to escape having to install expensive devices which they know their competitors have not been obliged to introduce. This leads back to the problem of effective supervision over the staff of inspectors. Their work needs to be checked constantly, and all protests from owners who are subjected to inspection need to be investigated thoroughly. These are problems of administration. The bureau needs to be in charge of a thoroughly competent, high-minded chief. The staff of inspectors should be composed of men and women who have secured their positions through an exacting process of personnel administration. They need to be rigorously protected against political pressure and attempted bribery. They need to be effectively supervised, and there ought to be enough of them to do the work well.

Good judgment, tact, and firmness are essential. A multitude of precedents must be established with respect to given kinds of situations. Thus, all printing establishments must be required to maintain safety devices around their printing presses; flywheels and belting must be housed wherever they are used. There would be endless variations with respect to specific cases, but requirements should be fair and reasonable, and above all, fairly interpreted and uniformly applied.

Administration of factory laws often breaks down at the point of enforcement. That is, the inspector does his duty, reports a violation of orders, and finds they are not obeyed. If he has no means of compelling obedience, his morale is rapidly undermined. He tends to overlook violations and to be careless about reports. He goes through the routine of making inspections in order to hold his job and so becomes cynically indifferent about violations. This is most likely to happen if prosecutions are left in the hands of locally elected county attorneys. Pressure of every kind makes the local prosecutor indifferent toward these cases. The most important pressure used is political. The state bureau should have an attorney from the attorney general's staff assigned to it for this work. He should systematically

and thoroughly follow up all cases reported to him. Only thus can the morale of the inspectors be maintained and effective administration be achieved.

A curious and baffling obstacle to effective administration sometimes appears due to the unwillingness of workmen to submit to the inconvenience caused by the devices contrived to protect them. Workmen will remove safety appliances in order to get at their machines more conveniently. They seem to be willing to take the additional risk in order to avoid the nuisance entailed by a safety device. Only the employer himself can deal with such a problem.

The idea underlying factory laws can be carried into other areas. Hazards to health are numerous and subtle. Eyesight may be seriously impaired in many occupations. Permanent injury to throat and lungs may follow prolonged exposure to certain kinds of dust or gas. In co-operation with the department of health, these problems need to be explored continually. New dangers are constantly lurking where least expected, and the employer himself, as well as his employees, is often unaware of the insidious hazards that appear. These need to be discovered and appropriate steps taken to safeguard the workers. Once these hazards are understood, and ways of combating them discovered, it should be the duty of the bureau in the department of labor to see to it that reasonable and adequate precautions are taken.

Nobody knows how much can be done in the future along these lines. It is to be expected that some employers will resist the steady encroachments of the state when it undertakes to tell them what they may or may not do. But in the broader interests of social welfare the state can perform no better service than to take aggressive steps to the end that lives and health and physical well-being of workers are protected as effectively as modern science knows how to do it. This means advancing civilization. Every state should be prepared with adequate administrative agencies competent to do the things that need to be done when the problems appear. Legislatures should grant power to administrative agencies to do these things, but the administrative agencies must be so organized as to be fit to assume the powers and responsibilities entrusted to them.

#### MAINTENANCE OF THE BUILDING CODE

Every state needs a building code. Though some of these are elaborate indeed, they need not be so if a well-organized and competent administrative agency is charged with interpreting and enforcing them. Such an agency would be a bureau in the department of labor.

The larger cities would have their own special building codes and zoning ordinances. A state law covering the fundamentals of safe building construction is also needed. To the majority of contractors and builders the minimum requirements of a building code are of slight significance, since most builders ordinarily meet those requirements and usually do even more. It has been necessary, however, to provide safeguards against fire, faulty plumbing, electric wiring, ventilation, and lighting.

The statute conferring power on the department to put in force a building code should leave the department considerable leeway. New methods of construction and new devices for promoting health and safety are rapidly developing. What may have been considered safe and adequate a few years ago may be quite unsatisfactory today. The administrative agency should be in a position to keep the code up to date. On the other hand, however, it is possible to be too progressive, in a sense, and to insist upon standards of construction really not essential to the interests of health and safety. With this in mind, it may be suggested that advisory boards, such as have been proposed elsewhere, might be used to advantage in this department. An advisory board composed of builders, contractors, owners, and representatives of the building trades, could serve usefully in preparing a building code.

### LABOR STATISTICS

Labor statistics are sufficiently voluminous and important to justify the maintenance in a department of labor of a bureau concerned with their compilation. In some states this department is charged with the compilation of all kinds of statistical data, many of which are not primarily of interest to the department.<sup>10</sup> The guiding principle should

<sup>10</sup> An example is afforded by the State of Maryland: "It shall be the duty of said Commission (1) to collect statistics concerning and examine into the condition of labor in the State, with especial reference to wages, and the causes of strikes and disagreements between employees and employers.

"(2) To collect information in regard to the agricultural conditions and products of the State, the acreage under cultivation and planted in the various crops, the character and price of land, the live stock, etc., and all other matters pertaining to agricultural pursuits, which may be of general interest and calculated to attract immigration to the State.

"(3) To collect information in regard to the mineral products of the State, the output of mines, quarries and so forth, and the manufacturing industries.

"(4) To collect information in regard to railroads and other transportation companies, shipping and commerce.

"(5) To keep a bureau of general information and to this end all offices and institutions of the State, including offices of the General Assembly, are directed to transmit to the Commissioner of Labor and Statistics, all reports as soon as possible.

"(6) To classify and arrange the information and data so obtained, and as soon as

be that the central bureau of records should be responsible for gathering and classifying all statistics. Nevertheless there may well be exceptions to this rule. Since certain statistical data would be of use to only one department, it would be appropriate for that department to gather the data and keep them on file. But if the data are of considerable interest and value to other agencies of administration, they should be readily available in the central office. It should always be incumbent on any of the line departments to show cause why they individually should be authorized to maintain a staff of statisticians to compile data exclusively for their own use. Every department would do some such work for itself, but the presumption would always be against extending such activities. With a view to avoiding duplication of effort and of having data readily available for the use of all, this task should be primarily the responsibility of the central office.

### CONCLUSION

Many activities carried on by the various states have not even been mentioned in this volume. No good purpose would be served by trying to enumerate them all. Certain states maintain services that are found nowhere else; other services are maintained in only a few states. Many services are maintained only temporarily. With respect to all these it may be said that in so far as it can be done without doing violence to sound principles of integration, special services should be entrusted to one or another of the large departments dealt with in the foregoing pages. In some instances, however, this could not be done. Then it is appropriate to set up a separate agency even though it be a small one.

A few states have special agencies to regulate boxing and other sports. Many states have special agencies to regulate the liquor traffic or to maintain state-owned liquor stores.<sup>11</sup> Many states maintain libraries, museums, historical societies, and other agencies charged with some particular task such as constructing a memorial or conducting a historical pageant. So long as these services are highly specialized and unique, there is no reason why the legislature should not set up special independent agencies for their administration, though all should bear

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practicable after entering upon the duties of its office, publish the same in substantial book form and annually thereafter revise and republish same." Secretary of State of Maryland, *Maryland Manual* (Baltimore: Twentieth Century Printing Company, 1935), p. 76.

<sup>11</sup> For a detailed account of the ways in which the various states have administered the liquor laws see L. V. Harrison and Elizabeth Laine, *After Repeal* (New York: Harper and Brothers, 1936), a study of liquor control administration.



the same relation to the central staff agencies as do the great departments. On this point there should be no compromising with the principle that has to do with concentrating power and responsibility in the chief executive. One of the principal theses of this book has been that the governor should have full and direct power over a few important staff agencies through which he would be able to exercise all the authority and influence that he ought to have, and all that one man can reasonably be expected to exercise intelligently over the entire field of state administration.

Throughout this book it has been assumed that every state should organize for the purpose of administering through its own offices and departments all the services which it may be thought desirable to maintain within the state. At no point has the possibility been considered that at some future time states themselves may be consolidated, or that great administrative areas, embracing several states, may be created, or that the federal government itself may take over full responsibility for administering one or more of the services that have in the past been administered by states. Yet any one, or all, of these steps may one day be taken, largely in the interests of better administration. The reason is that many of the states are not suitable areas for the administration of certain very important services; and no amount of administrative reorganization within the states themselves can make them so. The nature of the service to be performed, the geographical area of the state, the density of its population, and its material wealth, are all very important considerations that have a bearing on administration.

With respect to these matters it is obvious to the most casual observer that the states vary tremendously. The population of certain great cities, such as New York, Chicago, Philadelphia, or Detroit, exceeds the population of certain entire states. More people live in New York City than can be found in a whole group of middle western or Rocky Mountain states. More people live in Chicago than can be found in the whole State of Iowa. On the other hand, states like Montana or Texas are as large as several of the eastern seaboard states grouped together. And the wealth concentrated in New Jersey or Maryland exceeds the total wealth of many western states together.

With these facts in mind it becomes clear at once that the work of a state police department in Wyoming or Nevada for instance would be very different indeed from that of a similar department in New York or New Jersey. The administration of factory laws, the supervision of public utilities, or the administration of a social welfare program, would be a very different problem in North Dakota, Idaho,

or Arizona than it would be in Massachusetts, Pennsylvania, or Ohio. On the other hand the administration of the various agricultural services would present problems in Minnesota, Iowa, or Nebraska that would hardly appear at all in Rhode Island or Vermont.

Furthermore, certain states, such as Arkansas and New Mexico, are so limited in respect of financial resources as to make it seem virtually impossible to maintain at a high level some administrative services such as those embraced in social welfare or the field of education.

Many times it has been pointed out in this book that *counties* have ceased to be suitable areas for the administration of certain services. For the simple fact is that counties do not have needs in proportion to their wealth. Indeed, their needs often vary inversely as does their wealth. Thus it was pointed out that counties do not have school children to be educated, insane people to be cared for, rocky streams to be bridged, or highways to be developed in proportion to their wealth. To leave these services to the counties is to condemn many of them to a permanent backward status with respect to these matters. Solutions have been sought through state aid on the one hand, and assumption of full responsibility by the state on the other.

*Exactly the same problems appear on the broader stage, involving the states and the nation.* And similar solutions suggest themselves. Indeed, federal aid has long been practiced with respect to such matters as agricultural needs, social welfare, conservation, and highway construction. But is it not feasible for the federal government to take over full responsibility for some services, just as some states have taken over from the counties full responsibility for public education or for highway construction and maintenance? Certain states are scarcely able to care for their forests, to reclaim their wastelands, or to cope with their agricultural problems in a satisfactory manner. The proper regulation of the mining industry or of electric power production may well be beyond the capacity of some states. Will these responsibilities ultimately be taken over by the federal government?

The idea of functional consolidation has possibilities. Were this idea to be carried to a logical conclusion, a regional administrative area embracing several states might be created for the purpose of administering the agricultural services for all of them, somewhat as groups of counties have created administrative districts for the purpose of maintaining public health services or for carrying on drainage projects. This co-operative arrangement is called functional consolidation, and it is not at all impossible that groups of states should resort to it.

Actual consolidation of states would seem to be too remote a pos-

sibility to be considered seriously. The movement for consolidation of counties has been exceedingly slow, even where the need for it has been very clearly apparent. Nevertheless, the time may come when even *state* consolidation will not be looked upon as fanciful at all. But all these possibilities lie in the future, and no doubt they will stimulate the imagination and test the ingenuity of a future generation of students of public administration.

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